
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

CINTHIA THEVENIN, individually, and as wife of EDSON THEVENIN,
Decedent, and as Administratrix of the Estate of EDSON THEVENIN,
and as mother and natural guardian of Infant N.T. and as mother and
natural guardian of Infant Z.T.,

Plaintiffs

against

THE CITY OF TROY and SERGEANT RANDALL FRENCH

Defendants

RECORD OF EXHIBITS "I" – "O"

PART 3

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1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF NEW YORK

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4 CINTHIA THEVENIN, individually, and as wife of
5 EDSON THEVENIN, Decedent, and as Administratrix
6 of the Estate of EDSON THEVENIN, and as mother and
7 natural guardian of Infant N.T. and as mother and
8 natural guardian of Infant Z.T.,

9 Plaintiffs,

Docket No.
1:16-CV-1115

10 -against-

11 THE CITY OF TROY, and SERGEANT RANDALL FRENCH,

12 Defendants.

13 EXAMINATION BEFORE TRIAL of a non-party witness,
14 PHILLIP GROSS, held at the Law Offices of FitzGerald,
15 Morris, Baker, Firth, 16 Pearl Street, Glens Falls,
16 New York, on Thursday, October 26, 2017, commencing at
17 12:45 p.m.; before Peggy Alexy, Shorthand Reporter
18 and Notary Public in and for the State of New York.
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24

AMF REPORTING SERVICES, INC.
(518) 982-1341

1 APPEARANCES:

2 NEIL S. TORCZYNER, ESQ.
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7 BY: NEIL S. TORCZYNER, ESQ.
8 Attorney for Plaintiffs

9 FITZGERALD, MORRIS, BAKER, FIRTH, P.C.
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13 BY: JOHN D. ASPLAND, JR, ESQ.
14 Attorney for Defendants

15 TREVOR W. HANNIGAN, ESQ.
16 311 State Street
17 Albany, New York 12210
18 Attorney for Phillip Gross
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S T I P U L A T I O N S

It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto, that the Examination Before Trial is being held pursuant to the Federal Rules; that the Examination be conducted before Peggy Alexy, Shorthand Reporter and Notary Public in and for the State of New York; that the transcript of testimony may be signed before any Notary Public or other officer authorized to administer oaths.

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1 Phillip Gross,
2 having been first duly sworn by the Notary Public,
3 was examined and testified as follows:

4 BY MR. TORCZYNER:

5 Q. Good afternoon. My name is Neil Torczyner. I am
6 an attorney with the firm of Harfenist, Kraut and
7 Perlstein, and we together with the firm of Hach
8 and Rose represent Cinthia Thevenin and various
9 roles as the plaintiff against the City of Troy and
10 Sergeant Randall French.

11 I am going to ask you a series of questions.
12 I am going to ask you to keep your answers verbal,
13 as to the young lady seated to your immediate left
14 cannot take down shrugs of the shoulders or nods of
15 the head. If at any point you don't understand a
16 question that I am asking, let me know. Since your
17 answers have been sworn, I am going to assume that
18 they are all truthful and responsive to the
19 questions that I am asking. If you are not sure
20 what I am asking, let me know.

21 As you know, the gentleman seated to your
22 right is your attorney, who at certain points may
23 object. Wait for us to resolve if there are any
24 issues. If he gives you specific instructions, you

1 will follow the instructions given to you by your
2 counsel.

3 If any point you need a break, let us know;
4 use the bathroom, personal phone call, or make one,
5 that's fine. If you want a drink, there is water
6 down at the end of the table. Other than that,
7 maybe counsel for the defendant will order a
8 sandwich for you if you ask him nicely. But
9 basically, if you do need to take care of something
10 personal, don't hesitate to ask. And just let us
11 know, and we will accommodate you.

12 Do you understand those instructions as I have
13 given them to you?

14 A. Yes.

15 Q. Are you under the influence of anything that would
16 prevent you from understanding my questions and
17 answering them?

18 A. No.

19 Q. What is your home address?

20 A. [REDACTED], Green Island.

21 Q. And for how long have you resided at that address?

22 A. Thirty-six years.

23 MR. TORCZYNER: Mark this as Gross 1,
24 please.

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1 (Gross Exhibit 1 was marked for
2 identification.)

3 MR. TORCZYNER: That was for you, and
4 this is for the witness. You have a copy for
5 you.

6 BY MR. TORCZYNER:

7 Q. I am going to show you now a document that has been
8 marked as Gross 1. Have you ever seen this before?

9 A. No.

10 Q. Your counsel accepted services, and this is the
11 subpoena that required you to appear for deposition
12 in this matter. You can put it in the center of
13 the table. I won't be asking any questions about
14 it.

15 Have you ever been a plaintiff in a lawsuit?

16 A. Yes.

17 Q. More than one or just one?

18 A. One.

19 Q. Who was that against?

20 A. City of Troy.

21 Q. Is that lawsuit still pending or has it been
22 resolved?

23 A. Still pending.

24 Q. Is Mr. Hannigan your counsel in that lawsuit?

1 A. Yes.

2 Q. I won't be asking you any questions about that
3 lawsuit.

4 Have you ever been a defendant in a lawsuit?

5 A. Yes.

6 Q. Is that lawsuit still pending?

7 A. No.

8 Q. When was that lawsuit resolved?

9 A. I was asking him if he remembered when we went to
10 motor vehicle court.

11 Q. Unfortunately, he can't answer the question for you
12 but --

13 A. Three years ago.

14 Q. Was it a traffic case?

15 A. Repair shop.

16 Q. I'm sorry.

17 A. For the business.

18 Q. It was commercial related to the business?

19 A. Yes, for my business.

20 Q. Other than that lawsuit, have you ever been a
21 defendant in any other lawsuit?

22 A. No.

23 Q. What's the name of the business?

24 A. Phil's Automotive.

1 Q. Who is the plaintiff in that lawsuit, if you know?

2 A. I don't remember her name.

3 Q. Do you know what the claims were in that lawsuit

4 against Phil's Automotive?

5 A. For an engine on a vehicle.

6 Q. I'm sorry.

7 A. For an engine on a vehicle.

8 Q. She had complaints about the performance of that

9 engine?

10 A. There was no oil put in the motor.

11 Q. But you are sitting here and testifying in a

12 deposition in an office that is FitzGerald,

13 Baker -- Morris, Baker Law Firm. Have you ever

14 testified in a deposition before?

15 A. Yes.

16 Q. How many times have you testified in a deposition?

17 A. Once.

18 Q. Was it related to one of the two lawsuits we have

19 discussed previously?

20 A. Yes.

21 Q. Have you ever testified in court?

22 A. Yes.

23 Q. Have you testified before a grand jury?

24 A. Yes.

1 Q. Have you testified before the grand jury in
2 connection with the events that took place on April
3 17th, 2016 involving Randall French and Edson
4 Thevenin?

5 A. Yes.

6 Q. How many times did you testify before the grand
7 jury?

8 MR. HANNIGAN: Objection. You can
9 answer.

10 THE WITNESS: In that case?

11 BY MR. TORCZYNER:

12 Q. I am just asking how many times have you testified
13 period before the grand jury.

14 A. Does it count when they send you out and call you
15 back?

16 Q. I will make it easy. How many days have you
17 testified?

18 A. Just one.

19 Q. Just one day. And that one day was just in
20 connection with the Thevenin and Randall French
21 matter?

22 A. Yes.

23 Q. Did you review any documents before you came here
24 to testify today in this matter?

1 A. No.

2 Q. Other than counsel seated to your immediate right,
3 did you discuss anything with anyone in order to
4 prepare to testify today?

5 A. No.

6 Q. Is Phil's Automotive still in business?

7 A. Yes.

8 Q. You are the sole owner of Phil's Automotive?

9 A. Sole owner and sole employee.

10 Q. Where is it located?

11 A. 416 Route 7 in Troy.

12 Q. What does Phil's Automotive do?

13 A. Automotive repair and towing.

14 Q. How long have you operated Phil's Automotive?

15 A. Thirteen years.

16 Q. Were you a tow truck driver for any period of time?

17 A. Yes, still am.

18 Q. Have you been the sole employee during the entire
19 time that Phil's Automotive has been in business?

20 A. Yes.

21 Q. Do you keep time clock or time tickets for yourself
22 for the work that you do?

23 A. No.

24 Q. Were you working in your capacity as the proprietor

1 of Phil's Automotive on April 17th, 2016?

2 A. Yes.

3 Q. When I talk about April 17th, 2016, I am going to
4 be asking you questions specifically about a motor
5 vehicle incident where you came to on the Collar
6 City Bridge in Troy. If I had just mentioned April
7 17th, 2016, would you know what I am talking about?

8 A. Yes.

9 Q. Where were you coming from prior to going to that
10 motor vehicle incident on the Collar City Bridge?

11 A. My house.

12 Q. Did you have a prior job earlier in the morning on
13 April 17th, 2016?

14 A. Prior?

15 Q. Did you do any tow job on April 17th, 2016, before
16 coming to the Collar City Bridge?

17 A. No.

18 Q. Why did you go to the Collar City Bridge?

19 A. I received a tow call.

20 Q. Who called you to go to the bridge?

21 A. New York State Police. Not to the bridge.

22 Q. Where were you called to go to?

23 A. Congress Street and 15th.

24 Q. Do you recall who called you from New York State to

1 do that tow?

2 A. Dispatch.

3 Q. Is that the first time that you had gotten the job
4 from the New York State to go do a tow?

5 A. No.

6 Q. Do you know what you were supposed to tow?

7 A. No.

8 Q. Do you remember anything about the dispatch that
9 you got?

10 A. We have a call, Congress and 15th for a DWI. Okay,
11 I am going to be right out.

12 Q. Do you know who was the -- who was the underlying
13 age -- withdrawn.

14 When you get a call from the New York State
15 Police dispatch, that could be for any particular
16 municipality; correct?

17 A. Just for the New York State Police.

18 Q. So this was actually a DWI arrest made by the
19 New York State Police?

20 A. Correct.

21 Q. Have you ever gotten calls for towing from other
22 cities within Rensselaer County?

23 A. Yes.

24 Q. When you get that call for a tow, who calls you for

1 that?

2 A. Either Rensselaer County Public Safety or Troy
3 Police dispatch desk.

4 Q. So in this case, you got a call from New York State
5 and you were going to be going to Congress Street.
6 What route did you take to get there?

7 A. 787, Alternate 7, over the Collar City Bridge,
8 Hoosick Street, to 630 Hoosick Street, which was my
9 previous address to get the tow truck, to go over
10 South Lake to Pivots to Congress to the tow call.

11 Q. How far did you get on that route before you
12 stopped when you saw the motor vehicle incident
13 involving French and Thevenin?

14 A. Mile and a half, two miles.

15 Q. Did you actually go to get your tow truck before
16 you saw the motor vehicle incident?

17 A. No.

18 Q. So you were still en route to go get your tow truck
19 when you saw it?

20 A. Correct.

21 Q. Where were you coming from when you first saw the
22 vehicles on the Collar City Bridge?

23 A. My house.

24 Q. What street did you turn off of when you first saw

1 those vehicles on the Collar City Bridge?.

2 A. I turned off 787 onto Alternate 7, which is the
3 Collar City Bridge.

4 Q. At that point, did you see any vehicles moving?

5 A. No.

6 Q. We have been talking about a Sergeant Randall
7 French, do you know Randall French?

8 A. No.

9 Q. Did you ever meet him?

10 A. No.

11 Q. Do you know a Captain Matthew Montanino?

12 A. Yes.

13 Q. When did you first meet Captain Montanino?

14 A. Four years ago. He also works on Green Island.

15 Q. He works for the police department in Green Island?

16 A. Yes.

17 Q. Does he work for Green Island Police Department?

18 A. Snow removal.

19 Q. Did you see Captain Montanino that night?

20 A. Yes.

21 Q. Did you recognize him when you first saw him?

22 A. Yes.

23 Q. Do you ever socialize with Captain Montanino?

24 A. Yes.

1 Q. Are you members of the same club or fraternity?

2 A. No.

3 Q. Ever go out to eat?

4 A. No.

5 Q. We talked about Edson Thevenin also. Do you know
6 that name, Edson Thevenin?

7 A. Yes.

8 Q. When did you first hear that name?

9 A. On the news.

10 Q. Did you ever meet Edson Thevenin while he was
11 alive?

12 A. No.

13 Q. What did you see when you first got onto the Collar
14 City Bridge?

15 A. Lights, flashing lights.

16 Q. Police lights?

17 A. Yes.

18 Q. Did you see vehicles?

19 A. Eventually.

20 Q. So you got onto the Collar City Bridge, and you saw
21 police lights, but you couldn't at that time see
22 vehicles. You just saw flashing lights?

23 A. Flashing lights and sirens.

24 Q. And how far did you travel onto the bridge before

- 1 you actually saw a police vehicle?
- 2 A. I was across the bridge stopped.
- 3 Q. You were on the other side of the bridge?
- 4 A. Correct. Troy side.
- 5 Q. Which direction were you traveling on the Collar
- 6 City Bridge?
- 7 A. East.
- 8 Q. And the Troy Police vehicles you saw were traveling
- 9 in which direction?
- 10 A. East.
- 11 Q. They were traveling east as well?
- 12 A. Correct.
- 13 Q. They were traveling east in the eastbound lanes or
- 14 in the westbound lanes?
- 15 A. They were on Hoosick Street, so to the west of me.
- 16 Q. Okay. Which direction -- you are familiar with
- 17 that bridge; correct?
- 18 A. Correct.
- 19 Q. Okay. You were traveling east in the eastbound
- 20 lane?
- 21 A. Correct.
- 22 Q. The Troy City Police vehicles that you saw were on
- 23 the other side of the barrier?
- 24 A. Correct.

1 Q. And they were also heading east?

2 A. Correct.

3 Q. And they were heading east in what would usually be
4 the westbound lane of traffic; correct?

5 A. They were just on the west side of me heading east
6 when I seen lights on them.

7 Q. When you first got onto that bridge, did you have a
8 police radio in your car?

9 A. No.

10 Q. Have you ever had a police radio in the car?

11 A. No.

12 Q. So when you first saw the flashing lights, what
13 were you thinking?

14 MR. HANNIGAN: Object.

15 THE WITNESS: Don't remember.

16 BY MR. TORCZYNER:

17 Q. Do you recall looking to see where the lights were
18 coming from?

19 A. Yes.

20 Q. Okay. And how long were you traveling on the
21 bridge before you realized where those lights were
22 coming from?

23 A. I was over the bridge slowing down at the red
24 light. I heard lights and sirens, and I came to a

1 stop. Usually cops were flying from underneath the
2 bridge up Hoosick Street, so I wasn't going to
3 continue if that's where they were going, so I was
4 at a stop.

5 Q. Did cars pass you coming up Hoosick Street?

6 A. I don't remember seeing any cars. I was focusing
7 on what was going on.

8 Q. What were you focusing on?

9 A. The lights and sirens.

10 Q. Okay. Did you see multiple police vehicles at that
11 point?

12 A. I seen one.

13 Q. And was that police vehicle moving or stopped?

14 A. It was following a dark colored car.

15 Q. It was following a dark colored car -- withdrawn.

16 Can you describe the car that you are saying
17 was dark colored?

18 A. Small; four door, two-door car, Honda.

19 Q. And the police vehicle that was following the
20 Honda, was that a marked police vehicle or unmarked
21 police vehicle?

22 A. Marked.

23 Q. Which direction was the Honda traveling at that
24 point?

1 A. East.

2 Q. East on the Collar City Bridge?

3 A. On Hoosick Street.

4 Q. He was on Hoosick Street. And how far behind the

5 Honda was the police vehicle?

6 A. They were close together.

7 Q. Was it in contact with it?

8 A. No.

9 Q. Was it a car length behind it?

10 A. No, no contact. Maybe a car length.

11 Q. Could you hear anything being said over any of the

12 police microphone or was it just the sirens you

13 were hearing?

14 A. No, just the sirens.

15 Q. Did you see the driver of the Honda at that point?

16 A. No.

17 Q. Did you see the driver of the police vehicle at

18 that point?

19 A. No.

20 Q. How fast was the Honda going at that point when you

21 saw him, if you can estimate?

22 A. Less than 20 miles an hour, 15, 20 miles an hour.

23 Q. What did you see the Honda vehicle -- withdrawn.

24 Did you see the Honda vehicle make a turn at

1 that point?

2 A. The Honda took a turn to head west onto the Collar
3 City Bridge.

4 Q. And the police vehicle followed that Honda onto the
5 Collar City Bridge?

6 A. Yes.

7 Q. What did the Honda do next?

8 A. The police vehicle as they took the turn, went
9 around the Honda and blocked him off as they
10 entered on the Collar City Bridge.

11 Q. Police vehicle come to a stop at that point?

12 A. Yes.

13 Q. What did the Honda do after the police vehicle
14 turned in front of it to block it?

15 A. There was a light contact noise, minor impact as it
16 went around the bend.

17 Q. Did you see an impact?

18 A. I heard it.

19 Q. Did it sound like a vehicle hitting a vehicle, or
20 vehicle hitting a concrete barrier, or something
21 else?

22 A. I just heard the metal, like an accident.

23 Q. Did you see an unmarked Troy vehicle following the
24 Honda as well?

1 A. Yes, a black car.

2 Q. Did you see the Troy unmarked black car come onto
3 the bridge behind the Honda?

4 A. Yes.

5 Q. Did it come onto the bridge behind the Honda before
6 or after the marked vehicle pulled to block the
7 Honda?

8 MR. HANNIGAN: Objection to form. You
9 can answer.

10 THE WITNESS: It was a few -- a minute or
11 two after the cops had blocked him off in
12 front and the shots rang out.

13 BY MR. TORCZYNER:

14 Q. So we haven't gotten to the shots yet, but I
15 appreciate the information.

16 What happened next after you saw the police
17 vehicle block the Honda and you heard the sound of
18 the metal collision?

19 A. Police car came to a stop, officer got out, shots
20 rang out.

21 Q. Did you see the officer firing his gun?

22 A. I did not see the officer actually firing his
23 weapon. I thought the other guy had opened fire,
24 because there was no comment from the cop to get

1 out of the vehicle.

2 Q. Did you see the officer outside of his vehicle
3 before the shots were fired?

4 A. Yes.

5 Q. At that point when the officer was standing outside
6 of his vehicle, was he in contact, physical contact
7 with the Honda?

8 A. No.

9 Q. How many shots were fired, if you recall?

10 A. Maybe eight to twelve shots. The only reason why I
11 can't -- I couldn't say that I seen him fire his
12 weapon because the lights were so blinding. I see
13 him when he got out.

14 Q. Your testimony is whatever you recall. You don't
15 have to apologize or explain why you couldn't see
16 it. It is whatever you remember that you saw or
17 heard.

18 Did you hear the officer say anything before
19 the shots were fired?

20 A. No.

21 Q. Did you hear the driver of the Honda say anything
22 before the shots were fired?

23 A. No.

24 Q. Now we talked about that trailing police vehicle,

1 the black vehicle that was behind the Honda, was it
2 already on the bridge at that point where you heard
3 the shots fired?

4 A. Yes. It was behind the black Honda.

5 Q. Was it in contact with the black Honda?

6 A. I don't remember.

7 Q. From the time that you heard the metal sound that
8 you had described before, did you see the marked
9 police vehicle move after that?

10 A. Yeah. He moved and blocked off the Honda.

11 Q. He moved and blocked off the Honda after that
12 collision sound?

13 A. After a light collision, he came around the bend.
14 He moved after that collision, and blocked off the
15 Honda.

16 Q. Where was the Honda; was it alongside the concrete
17 barrier or at an angle to the barrier?

18 A. It was parallel in the road to the barrier.

19 Q. And at that point when the Honda was parallel to
20 the barrier, where was the trailing police vehicle?

21 A. Behind it.

22 Q. Was it touching the vehicle, or was there some
23 space there?

24 A. There was some space.

1 Q. At the time that you heard the shots, was the Honda
2 moving?

3 A. No.

4 Q. How much distance was there between the Honda and
5 the police vehicle, if you can estimate, at the
6 time that you heard the shots?

7 A. Four feet.

8 Q. How much distance was there between -- going to ask
9 you to --

10 A. I'm sorry.

11 Q. If you need to answer, you need --

12 A. I am trying to. I'm sorry.

13 Q. How much distance was there between the Honda and
14 the trailing police vehicle at the time that you
15 heard the shots that were fired?

16 A. Probably double the distance.

17 Q. That could be?

18 A. Eight feet maybe.

19 Q. Where were you when you heard the shots fired?

20 A. In my truck in the eastbound lane on the Collar
21 City Bridge at the red light.

22 Q. You took a video of some of the events that took
23 place that night; right?

24 A. Yes.

1 Q. You gave that video to the Troy Police Department;
2 correct?

3 A. Yes.

4 Q. Why did you take that video?

5 A. I don't know. Huh.

6 Q. People just take videos of things they see. I
7 understand that. Did you start taking that video
8 before or after the shots were fired?

9 A. After.

10 Q. So the shots get fired, and then what do you see
11 happening next after that first set of shots?

12 A. See the car roll forward, the black Honda.

13 Q. Which car rolled forward?

14 A. The black Honda.

15 Q. How far forward did it roll?

16 A. Three, four feet. Three feet.

17 Q. Okay. And after the car rolled forward, did it
18 make contact with anything or anyone?

19 A. Made contact with the left rear of the police car,
20 and then it went to the right.

21 Q. At that point did you know that was Randall French?

22 A. I have no idea.

23 Q. But after the fact, you learned the officer that
24 was standing outside the car was Randall French;

1 correct?

2 A. Correct.

3 Q. What did Randall French do after it made contact
4 with -- the car made contact with him, and, yeah,
5 after the car made contact with Randall French,
6 what did he do?

7 A. Starting yelling, "Ow, my leg, get it off me."

8 Q. And at that point that's when you started taking
9 your video or had you started it before?

10 A. I had started my video, and as he was yelling and I
11 realized nobody else was helping him, I jumped out
12 of the truck and ran over.

13 Q. What was the driver of the Honda doing at that
14 point, if anything?

15 A. Nothing.

16 Q. Okay. After the car rolled forward and made
17 contact with Randall French, were there other shots
18 fired?

19 A. No.

20 Q. Did you ever see the driver of the Honda make
21 any -- withdrawn.

22 Did you learn that the driver of the Honda
23 died that night?

24 A. It was obvious.

1 Q. Okay. You could see that he was dead at that
2 point?

3 A. Yes.

4 Q. Did you see the driver of the Honda before he was
5 out of the -- out of the driver's seat of the car
6 or for the first time only afterwards?

7 MR. HANNIGAN: Objection to the form.

8 BY MR. TORCZYNER:

9 Q. Do you understand what I am asking you?

10 A. No.

11 Q. The driver of the car at some point came out of the
12 car?

13 A. Correct.

14 Q. Did you see the driver of the car while he was in
15 the car?

16 A. Yes.

17 Q. Did he look dead to you while he was in the car?

18 A. Yes.

19 Q. Did you see someone remove him from the car?

20 A. Yes.

21 Q. Who removed him from the car?

22 A. Troy police officer.

23 Q. You don't know which one though?

24 A. No.

1 Q. Where were you when the Troy police officer removed
2 him from the car?

3 A. In front of the Honda.

4 Q. What were you doing at that point?

5 A. Attempting to get the Honda back so the cop can get
6 out.

7 Q. Was somebody else in the driver's seat of the Honda
8 trying to -- withdrawn.

9 Was someone else in the driver's seat of the
10 Honda while you were trying to get it back?

11 A. Yes.

12 Q. Who was in the driver's seat?

13 A. Troy police officer.

14 Q. And you still don't know his name?

15 A. No.

16 Q. And how were you attempting to move the car?

17 A. By rocking it.

18 Q. Was anybody else rocking it with you?

19 A. Troy Police Officer D. C. Marble.

20 Q. D. C. would be Don?

21 A. I don't know. I know -- I know --

22 Q. You know him as D. C?

23 A. Yeah.

24 Q. How do you know D. C. Marble?

1 A. Friend of my brother.

2 Q. What is your brother's name?

3 A. Brian Gross.

4 Q. What is Randall French saying during this time when
5 you are trying to move the car?

6 A. Get it off me.

7 Q. So you are sitting in the car, in your truck, and
8 you start taking your video, and then you testified
9 that you realized that no one was helping, so you
10 got out of your car, you got out of your truck,
11 which way did you travel when you got out of your
12 truck?

13 A. West.

14 Q. And how far did you have to travel in order to get
15 to the front of the Honda?

16 A. Approximately 50 feet.

17 Q. During that time did you see the driver of the
18 other Troy Police vehicle, the trailing black car?

19 A. While I was jumping over? Yes. He was pulling up.

20 Q. He was driving his car?

21 A. No. He was behind the -- behind the Honda.

22 Q. You say he was pulling up, what do you mean by he
23 was pulling up?

24 A. He pulled in behind the Honda.

1 Q. So he pulled in behind the Honda while you were
2 coming over the barrier?

3 A. Just before I got over the barrier.

4 Q. There was a time that the shots were fired, the
5 trailing police car was not there yet; correct?

6 A. No.

7 Q. Do you ever see a gun in Randall French's hand?

8 A. No.

9 Q. Did you ever hear Randall French speak before those
10 shots were fired?

11 A. No.

12 Q. About how long after -- withdrawn.

13 At some point French got freed from between
14 the two cars; correct?

15 A. Correct.

16 Q. About how long after you came over the barrier was
17 French free between the two cars?

18 A. Five minutes.

19 Q. Did he ever lose consciousness during that point?

20 A. No.

21 Q. Did you ever see him bleeding?

22 A. No.

23 Q. Did he walk away after he was freed?

24 A. Yes.

- 1 Q. Did he walk away under his own power?
- 2 A. I'm -- he had a fellow officer hold onto his
3 shoulder so he can walk.
- 4 Q. But he was walking himself?
- 5 A. Yes.
- 6 Q. About how long after Randall French was freed did
7 you stay on the scene?
- 8 A. Two to three minutes.
- 9 Q. What happened after that?
- 10 A. When I went to leave, somebody said put me in
11 cuffs. D. C. Marble said, "No, he was here
12 helping, he is good to go." I left.
- 13 Q. Did you see any other civilians there while you
14 were there?
- 15 A. No.
- 16 Q. Did you hear anybody say to any of the police
17 officers you didn't have to shoot him?
- 18 A. No.
- 19 Q. Where did you go after you left?
- 20 A. 630 Hoosick Street.
- 21 Q. To get your truck?
- 22 A. Correct.
- 23 Q. Did you give anybody your name and information when
24 you were there at the scene of the motor vehicle

1 incident and the shooting?

2 A. No.

3 Q. Were you later contacted by a member of the Troy
4 Police Department to follow-up as far as what took
5 place there?

6 A. Yes.

7 Q. Who contacted you?

8 A. Captain Monahan (phonetic), I believe.

9 Q. How did he get a hold of you?

10 A. Kept calling my parents' house.

11 When I finished my call, there was a couple
12 streets blocked off and that's when I ran into
13 Captain Montanino and gave him my information, and
14 then they contacted my parents' house the next
15 morning, several times.

16 Q. Do you eventually come into the Troy Police
17 Department to talk to anyone about the events that
18 took place?

19 A. Yes.

20 Q. Who did you come in and meet with?

21 A. Detective Monahan.

22 Q. Can you describe Detective Monahan?

23 A. Older guy, salt and pepper hair, grayish hair.

24 Q. You described almost every cop I know.

1 A. I know.

2 MR. ASPLAND: Described me.

3 BY MR. TORCZYNER:

4 Q. Where did the meeting take place within Troy Police
5 Department?

6 A. Second floor of the Detectives' Bureau.

7 Q. Have you ever been in this before?

8 A. No.

9 Q. Who was in the meeting besides you and the
10 Detective Monahan?

11 A. Detective White, a bunch of people, bunch of
12 officers.

13 Q. Was this in a conference room, or an open setting,
14 or something else?

15 A. Open setting.

16 Q. Where were you sitting?

17 A. The side of a desk.

18 Q. Whose desk was it, if you know?

19 A. Ray White's.

20 Q. Did you know Ray White before that incident?

21 A. Yeah.

22 Q. How did you know Ray White?

23 A. Through my brother.

24 Q. Was Ray White interviewing you during this

1 incident?

2 A. Yes.

3 Q. Was Monahan interviewing you?

4 A. Only at first.

5 Q. Was anybody else asking you questions during this
6 interview?

7 A. Yes.

8 Q. Who else?

9 A. The cops that were on the task force in the City of
10 Troy. I don't know their names.

11 Q. Just a bunch of cops that were all sitting around
12 asking questions?

13 A. All friends of my brothers.

14 Q. All right. Just for our purposes, when you refer
15 to your brother, we are going to assume it's Brian,
16 unless you tell us otherwise?

17 A. Correct. He is the only brother I have.

18 Q. I wasn't looking for your personal life, but now
19 you have given it to me so there you go.

20 At that point, did you mention the video?

21 A. Yes.

22 Q. Did they know about the video before you brought it
23 up?

24 A. No.

1 MR. HANNIGAN: Objection.

2 THE WITNESS: What do you mean there?

3 MR. TORCZYNER: It is an objection. You
4 have to wait for the objection. We are going
5 to show -- ask you to move this down. Off the
6 record.

7 (Discussion off the record.)

8 MR. TORCZYNER: Back on. Now I am going
9 to show you now a video that's a file number
10 IMG underscore 0576 dot MOV. Okay. Move the
11 screen so possibly you can see it better.

12 Counselor, if you want to come around.
13 This is what we have to work with. I am going
14 to hit play and play this video.

15 (Playing the video.)

16 BY MR. TORCZYNER:

17 Q. So I have now played the video, which runs one
18 minute and 50 seconds in length according to the
19 file. Is this the video that you recorded?

20 A. Yes.

21 Q. What did you record that with?

22 A. My cellphone.

23 Q. What kind of cellphone was that?

24 A. iPhone.

1 Q. Do you know the model number?

2 A. Six.

3 Q. Did you record more than one video of that event or
4 just one?

5 A. Just one.

6 Q. Having reviewed that video, is that the video that
7 you recorded?

8 A. Yes.

9 Q. Has it been altered in any way?

10 A. No.

11 Q. The music that is being played in the beginning of
12 the video is what was playing in your car or that
13 was something else?

14 A. Yes.

15 Q. And the video was taken after all the shots had
16 been fired; correct?

17 A. Correct.

18 Q. And the video was taken after the Thevenin vehicle
19 had rolled forward into Randy French's vehicle
20 after those shots were fired?

21 A. Yes.

22 MR. TORCZYNER: Start this again. I am
23 only going to play the first 11 seconds. I
24 apologize for playing one minute and 50

1 seconds. It is mostly black. I just wanted
2 to make sure there were no differences or
3 changes.

4 (Playing the video.)

5 BY MR. TORCZYNER:

6 Q. Okay. So we are now about 12 seconds into the
7 video. From this point on, it is basically not
8 showing anything, is that because you are now going
9 over the barrier?

10 MR. HANNIGAN: Objection to the form.

11 THE WITNESS: Yes.

12 BY MR. TORCZYNER:

13 Q. The shots that you described before that you said
14 were eight to twelve, were they all in one
15 succession, or was there a gap at any point in the
16 shots being fired?

17 MR. HANNIGAN: Objection to the form.

18 BY MR. TORCZYNER:

19 Q. Do you understand the question I am asking you?

20 A. Yes.

21 Q. Can you answer that question?

22 A. All at once.

23 Q. Did the officers ask you questions about that video
24 when you played it for them?

1 A. No.

2 Q. How many times did you play it for them?

3 A. Half dozen times.

4 Q. Did the officers ask you questions about what you
5 observed prior to taking that video?

6 A. Yes.

7 Q. Did officers ask you questions about the shots that
8 were fired?

9 A. No.

10 Q. Did the officers ask you to give a consent to allow
11 them to take the video from your phone?

12 A. Yes.

13 (Gross Exhibit 2 was marked for
14 identification.)

15 BY MR. TORCZYNER:

16 Q. I am now going to show you a document that has been
17 marked as Gross 2. Take a look at it, and let me
18 know when you are done, please.

19 A. (The witness is perusing the document.) That is
20 not what I signed.

21 Q. This is not the document that you signed?

22 A. I did not sign this. Only the video I had on my
23 phone. This doesn't have nothing about a video on
24 there.

1 Q. Okay.

2 A. All right?

3 Q. Well, your recollection is what it is, and if you
4 look at this and say this is not what you signed,
5 then that is your testimony.

6 Is that your signature underneath where it
7 says, "Signed"?

8 A. Yes.

9 Q. Were there things that were added to this form
10 after you signed it? Withdrawn.

11 Let's back up. It's your signature on this
12 form; correct?

13 A. Correct.

14 Q. Do you recall signing a version of this form that
15 may not have had all the filled in information
16 that's on it now?

17 A. Yes.

18 Q. What version of this form -- withdrawn.

19 What was filled in on this form when you
20 signed it?

21 A. Authorization for the video of that incident.

22 Q. But the check that says a complete search of my
23 person was not checked off?

24 A. No. I wouldn't agree.

1 Q. Okay. It lists authorized, on the third line,
2 D/SGT McMann and White. Were those the two
3 detectives that you were talking about before?

4 A. Yes.

5 Q. Do you know what Detective McMann's first name is?

6 A. Jack or John.

7 MR. TORCZYNER: Off the record for a
8 second.

9 (Discussion off the record.)

10 BY MR. TORCZYNER:

11 Q. How long did this interview take at the Police
12 Department?

13 A. Half hour.

14 Q. And during this half hour, were you able to see if
15 there were people taking notes?

16 A. The only person taking notes was Ray white.

17 Q. Was Ray White taking notes on a computer, or
18 writing them on a pad, or something else?

19 A. Computer.

20 Q. Did Ray White prepare a statement for you to sign
21 at that point?

22 A. Yes.

23 (Gross Exhibit 3 was marked for
24 identification.)

1 BY MR. TORCZYNER:

2 Q. I am going to show you now a document that has been
3 marked Gross 3, and ask you to take a look at it
4 and let me know when you are done.

5 A. Okay.

6 Q. Do you recognize this document?

7 A. Yes.

8 Q. Is this the statement that you signed on April
9 17th, 2016?

10 A. Yes.

11 Q. Is there a signature there? Withdrawn.

12 Is it your signature next to where there is an
13 X by the word "signed"?

14 A. Yeah.

15 Q. Is there anything on this two-page document that
16 was not on it when you signed it?

17 A. No.

18 Q. What did you do after you signed this document?

19 A. I'm sorry. I was just looking at my signature on
20 the bottom.

21 Q. Okay. Do you have doubts as far as whether that --
22 whether you signed it?

23 A. I just don't make an almost complete G for my
24 signature. I don't know that's in there. I don't

1 know why else is on the bottom there.

2 Q. Do you recall signing a different version of this
3 form?

4 A. Yes.

5 Q. As you look at this, can you tell what is different
6 on this form than the one you signed?

7 A. My signature is on the bottom.

8 Q. What do you mean by that?

9 A. There is letters next to my signature.

10 Q. How about the typed portion of the form, is that
11 different than what you signed, or is that what the
12 document was when you signed it?

13 A. That's what I signed.

14 Q. Did you stay at the Police Department after you
15 signed this form?

16 A. No.

17 Q. Were there prior versions of this statement that --
18 withdrawn.

19 Did you see a -- let's back up.

20 You saw Ray White typing notes during his
21 interview with you; correct?

22 A. Correct.

23 Q. Did you actually see what was on his computer while
24 he was typing it?

1 A. No.

2 Q. Did Ray White print out a prior version of this
3 form, or is this the only version that he printed?
4 Do you understand what I am asking you?

5 MR. HANNIGAN: Objection to the form.

6 You can answer if you understand.

7 THE WITNESS: He had me sign here. I
8 don't know if this is what he printed out. I
9 know similar to -- I mean, it is obviously my
10 story. I don't know if this is an exact copy.

11 BY MR. TORCZYNER:

12 Q. Okay. My question to you is: Did he print out a
13 version of your story, give it to you to review,
14 and then make changes based upon you telling him
15 no, you need to change this? Do you understand
16 what I am asking?

17 A. I don't believe so.

18 Q. So he printed this out, and you signed it?

19 A. Correct.

20 Q. Did you read it before you signed it?

21 A. No.

22 Q. Did he give you an opportunity to read it, or did
23 he just say sign it?

24 A. Hand me the paper and said sign it.

1 Q. So you signed it and left?

2 A. I was talking to other officers.

3 Q. Did you take a copy of it with you?

4 A. It wasn't provided.

5 Q. At least they didn't give you a copy to take with
6 you.

7 When did you start getting phone calls from
8 the media about this?

9 A. Next day.

10 Q. Do you know how they got your information?

11 A. No idea.

12 Q. Did you talk to any members of the media about it?

13 A. Yes.

14 Q. Who did you speak to?

15 A. It was Lindsay Nielsen.

16 Q. Who does Lindsay Nielsen work for?

17 A. Channel 10.

18 Kumi Tucker.

19 Q. Give me the spelling on the first name.

20 MR. ASPLAND: K-U-M-I. K-U-M-I.

21 MR. HANNIGAN: She is Channel 10 too.

22 BY MR. TORCZYNER:

23 Q. Anyone else?

24 A. No.

1 Q. The conversation with Lindsay Nielsen, was that
2 recorded that you know of?

3 A. Not that I know of.

4 Q. And the conversation with Kumi Tucker, was that
5 recorded?

6 A. No, not that I know of.

7 Q. Were those in person conversations, or phone
8 conversations, or something else?

9 A. In person.

10 Q. How long after the shooting and collision did you
11 talk to Lindsay Nielsen?

12 MR. HANNIGAN: Objection. Asked and ask
13 answered. You can answer.

14 THE WITNESS: What was the question
15 again?

16 MR. TORCZYNER: How long after the
17 incident? How long after the shooting?

18 MR. ASPLAND: Yes. If she called you,
19 but —

20 BY MR. TORCZYNER:

21 Q. How long after the shooting incident did you talk
22 to Lindsay Nielsen?

23 A. 48 hours. 24, 48 hours.

24 Q. Was it more than one conversation or just one?

1 A. It was one.

2 Q. And how long after the shooting did you talk to
3 Kumi Tucker?

4 A. Myself, the same time.

5 Q. Did you talk to both of them at the same time?

6 A. No.

7 Q. Who did you speak to first?

8 A. Lindsay.

9 Q. Did you know either of them?

10 A. No.

11 Q. Did you ask them how they got your information?

12 A. Police personnel source.

13 Q. That's what they told you?

14 A. Yes.

15 Q. And they work for competing networks?

16 A. Yes.

17 Q. Did there come a time after you left the police
18 station that you realized that there were
19 inconsistencies in that document that is in front
20 of you that's Gross 3?

21 A. Yes.

22 Q. About how long after you left the police station
23 did you realize that there were inconsistencies?

24 A. Four hours, five hours.

1 I could go to the bathroom real quick.

2 Q. Absolutely.

3 (A short recess was taken.)

4 (The reporter read back the requested
5 portion.)

6 BY MR. TORCZYNER:

7 Q. What did you do after you realized there were
8 inconsistencies in your statement with the
9 recollection of events?

10 A. Called my brother.

11 Q. His name is Brian?

12 A. Yes.

13 Q. What, if anything, did you discuss with Brian?

14 A. That I needed to change something in my statement,
15 and if he could get a hold of Detective White for
16 me.

17 Q. Is Detective White a friend of Brian's?

18 A. Yes.

19 Q. And what happened next? Withdrawn.

20 Did you -- did he get a hold of Ray White?

21 A. No.

22 Q. Did you try to get a hold of Ray White?

23 A. Yes.

24 Q. What did you do?

1 A. Called a number to the desk and left a message.

2 Q. What did you realize was wrong in your statement or
3 inconsistent with your recollection of the event?

4 MR. HANNIGAN: Objection to the form.

5 THE WITNESS: I believe I stated when I
6 jumped over somebody threw him out onto the
7 ground, but he was already on the ground when
8 I got out.

9 BY MR. TORCZYNER:

10 Q. Is there anything else with your statement that you
11 remember is incorrect?

12 MR. HANNIGAN: Object to the form.

13 THE WITNESS: I don't remember. That was
14 the main thing.

15 BY MR. TORCZYNER:

16 Q. That was the reason why you were trying to get a
17 hold of him?

18 A. Yes.

19 Q. Did you leave more than one message or just one
20 message?

21 A. I left one. My brother had left one. I sent a
22 text message to somebody.

23 Q. Who did you send a text message to?

24 A. Marty Furcinitti.

1 Q. I don't know if I have it right, but
2 F-U-R-C-I-N-I-T-T-I. And if it is wrong, it is
3 wrong.

4 How did you know Marty Furcinitti?

5 A. Known him for several years through my brother, and
6 he lived a few houses away from my business.

7 Q. Did Marty respond to your text?

8 A. Yes.

9 Q. What did he do?

10 A. Stated he'd get a hold of Ray and have him get a
11 hold of me.

12 Q. Did Ray get a hold of you?

13 A. No.

14 Q. Did you follow-up with Marty about it?

15 A. I would have to look at my messages.

16 Q. Do you still have your messages from back then?

17 A. I believe so.

18 Q. Ask you to just to preserve them, don't delete
19 them, to the extent that you have them.

20 MR. ASPLAND: I join in that request.

21 MR. HANNIGAN: To Marty, preserve
22 messages to Marty for preservation?

23 MR. TORCZYNER: Correct.

24 MR. ASPLAND: My preservation request is

1 all text messages related to the subject of
2 the police involved shooting on the Collar
3 City Bridge in April of 2016.

4 MR. TORCZYNER: That's broader than my
5 request, but I will join in your request.

6 BY MR. TORCZYNER:

7 Q. I am going to show you some text messages that we
8 received from discovery from the defendants.

9 MR. TORCZYNER: Mark this.

10 (Gross Exhibit 4 was marked for
11 identification.)

12 BY MR. TORCZYNER:

13 Q. Show you now a document that has been marked as
14 Gross 4. Take a look at it, and let me know when
15 you are done, please.

16 A. (The witness is perusing the document.)

17 Q. I have showed you now a document that has been
18 marked as Gross 4, which I represent to you are
19 text messages that were forwarded or provided in
20 discovery by the attorneys for the Troy defendants
21 in this lawsuit. Do you recognize the text
22 messages that are in this document?

23 A. Yes.

24 Q. The white, this is a black and white document, but

1 the words that are with a white background are
2 yours?

3 A. Correct.

4 Q. Whose words are the ones that are with the black
5 background?

6 A. Marty.

7 Q. That is Marty Furcinitti?

8 A. Correct.

9 Q. Can you turn to page 265, please? The white
10 section is in the center. You are asking Marty to
11 get you a copy of your statement; correct?

12 A. Correct.

13 Q. At that point, you did not have a copy of your
14 statement; correct?

15 A. No.

16 Q. You indicate that you wanted to correct something.
17 What did you want to correct?

18 A. That when I stated when I got to the cars when they
19 pulled him out, but he was already out, fallen on
20 the ground, probably ran over.

21 Q. You wrote that you wish you recorded the gunshots;
22 correct?

23 A. Correct.

24 Q. Why did you write that?

1 A. I don't know what had happened.

2 Q. Did you take any pictures at all, or was it just
3 the video?

4 A. The AG's office said I took a picture before. I
5 don't remember it.

6 Q. Did they give you a copy of the picture?

7 A. No.

8 Q. Did they show you a copy of the picture they said
9 you took?

10 A. No.

11 Q. They just told you you took a picture?

12 A. Yeah.

13 Q. Did they give you any information about what was in
14 that picture?

15 A. No.

16 Q. Did Marty Furcinitti ever get -- withdrawn.

17 Did you ever wind up coming back to the Troy
18 Police Department to give another statement there?

19 A. No.

20 Q. Did you ever wind up talking to Ray White about
21 your original statement?

22 A. Yes.

23 Q. When?

24 A. The week after I was there, or following week after

1 I had a grand jury.

2 Q. Do you know what day this case went to the grand
3 jury? When I say this case, I mean the grand jury
4 presentation against Randall French.

5 A. Thursday or Friday after the shooting.

6 Q. Thursday or Friday of that week; correct?

7 A. Yes.

8 Q. You spoke to Ray White about a week later, plus or
9 minus?

10 A. Yes.

11 Q. What was your conversation with Ray White at his
12 desk?

13 A. That he never really apologized for not calling me
14 back. He apologizes for not getting a hold of me.
15 I don't know. I don't remember the rest of the
16 conversation.

17 Q. Whatever you remember, you remember.

18 A. I know I had my hopes to hold on, but trying to
19 wait for Trevor to come into his office.

20 Q. Were you contacted by Joel Abelove?

21 A. Yes.

22 Q. When were you contacted by Joel Abelove?

23 A. First time was when I was in the precinct to give
24 my statement.

1 Q. Did Joel Abelove ask you to come in to talk to him?

2 Withdrawn.

3 Did you ever talk to Joel Abelove about the
4 Randall French and Edson Thevenin shooting?

5 A. Yes.

6 Q. When did you have that conversation?

7 A. The date of the shooting.

8 Q. Did you tell Joel Abelove that French fired the
9 shots and then the car rolled into Thevenin?

10 A. Never asked.

11 Q. What do you recall him asking you about?

12 A. Can I see the video? I am Joel Abelove, Rensselaer
13 County District Attorney, mind if I look at that
14 video, and then him and Steve McAvoy went off, and
15 McAvoy left.

16 Q. And that was your entire conversation with him?

17 A. Yes.

18 Q. Did you ever tell Ray White that the shots were
19 fired before Thevenin's vehicle hit French?

20 A. Wasn't asked.

21 Q. At some point later you had conversations with the
22 Attorney General's Office about this
23 Thevenin/French incident?

24 A. Yes.

1 Q. Who contacted you from the Attorney General's
2 Office?

3 A. Ron Enfield.

4 Q. Do you know Ron Enfield, or --

5 A. Yes.

6 Q. -- was this the first time you had contact with
7 him?

8 A. I know him.

9 Q. How do you know him?

10 A. He used to be a Green Island police officer.

11 Q. Used to be a Green Island police officer?

12 A. Green Island, yes.

13 Q. As a result of your conversations with the AG's
14 office, did you come in and give a written
15 statement there?

16 A. Yes.

17 MR. TORCZYNER: Mark this.

18 (Gross Exhibit 5 was marked for
19 identification.)

20 BY MR. TORCZYNER:

21 Q. Showing you now a document that has been marked as
22 Gross 5. Take a look at it and let me know when
23 you are done, please.

24 A. Okay.

1 Q. Your signature is on the bottom right side of each
2 one of these pages, are those your signatures?

3 A. Correct.

4 Q. Did you sign this statement?

5 A. Yes.

6 Q. And this was the statement that was prepared at the
7 Attorney General's Office?

8 A. Yes.

9 Q. Whose handwriting is in the center of each page?

10 A. Ron Enfield's.

11 Q. Did you ever read this document before you signed
12 it?

13 A. Yes.

14 Q. Did you ask Mr. Enfield to make changes to the
15 document?

16 A. No.

17 Q. Towards the bottom of the first page, page 150, you
18 see a sentence that begins, about four lines from
19 the bottom, "The dark unmarked police car was
20 behind"?

21 A. Yes.

22 Q. Can you read aloud that sentence, please?

23 A. Dark unmarked police car was behind a dark colored
24 car and then also I watched back of what is going

1 on. This was the car that the police had boxed in.

2 Q. So this is describing the car that you now know is
3 the Thevenin car?

4 A. Correct.

5 Q. Read the next sentence, please.

6 A. Car backs up about three to five feet and hits the
7 unmarked car.

8 Q. Is that accurate? Is that what occurred?

9 A. Yeah.

10 Q. This says the Thevenin car backed up and hit the
11 trailing unmarked police car?

12 A. I don't remember. That's what it says.

13 Q. Read the next sentence, please.

14 A. Police officer --

15 Q. I see the police officer. Top of the line.

16 A. I see the police officer at the front of the car
17 that just backed up into the unmarked car.

18 Q. And keep reading.

19 A. The police officer at the front was about four feet
20 away. Police officer at the front had gotten out
21 of his patrol car and was standing near the rear
22 driver's side door of the patrol vehicle.

23 Q. Please keep reading.

24 A. I had my window opened --

1 MR. ASPLAND: You missed half a sentence.
2 Got out of his patrol car and was standing --
3 I'm sorry.

4 MR. TORCZYNER: He read that.

5 MR. ASPLAND: Yes.

6 BY MR. TORCZYNER:

7 Q. I had my window open.

8 A. Had my window open in my truck, and I think is
9 maybe when I took a picture to send it to my wife.

10 Q. Does that refresh your recollection about taking a
11 picture?

12 A. I don't know.

13 Q. Okay. Keep reading there. Seven lines down, the
14 dark colored car.

15 A. The dark colored car backs up and hits the unmarked
16 car and simultaneously I heard gunshots. Gunshots
17 went out. I started to switch over to video. Want
18 me to read?

19 Q. To the point to stop. As you read this, do you
20 recall that the gunshot came about when the dark
21 colored car hit the unmarked police car?

22 A. Yes.

23 Q. Okay. Keep reading. I'm sorry. I know you closed
24 the document up.

1 A. It is hard to put words in seconds. You know what
2 I mean? A minute in time.

3 Q. Understood. Read the next sentence starting with,
4 "I thought it was the guy being chased."

5 A. I thought it was a guy being chased because I never
6 heard the police yelling at this person driving the
7 car. I thought the person being chased was
8 shooting at the police when the shots stopped.
9 When the shot stopped.

10 Q. Keep on reading.

11 A. That's when I saw the car roll into the police
12 officer.

13 Q. Thank you. So that's what you had testified
14 before, when the shots stopped, that's when you saw
15 the Thevenin vehicle roll into Officer French?

16 A. Correct.

17 Q. Read the next sentence, please.

18 A. Car rolled about three feet forward, pinned the
19 police officer against his car.

20 Q. Thank you. You can stop reading for now.

21 Do you remember telling any member of the Troy
22 Police Department that the shots were fired before
23 Randall French was struck by the Thevenin vehicle?

24 A. Nobody asked. Nobody called back.

1 Q. Is that something that you had intended to tell
2 them if they called you back?

3 A. Absolutely.

4 Q. I am just going to go over a couple of photos from
5 the scene with you. You can leave that in the
6 center, if you don't mind.

7 Did you ever come back to the location during
8 the day on April 17th, 2016?

9 A. No.

10 Q. The only time you were there was about three
11 o'clock in the morning when it happened?

12 A. I can't say that. I drive there everyday a couple
13 times.

14 Q. The only time that you were at the scene of that --
15 withdrawn.

16 The only time that you were on the Collar City
17 Bridge on April -- withdrawn.

18 Try this again. Were you on the Collar City
19 Bridge later in the day on April 17th, 2016?

20 A. Possibly.

21 Q. Do you recall seeing crime tape during the daytime
22 on the Collar City Bridge on April 17th, 2016?

23 A. No.

24 Q. Do you remember seeing the Collar City Bridge

1 closed during the daytime on April 17th, 2016?

2 A. Yeah.

3 Q. You do recall seeing it closed that day?

4 A. On the news.

5 Q. Okay. Do you remember being -- good answer. You
6 might have also seen a picture in the newspaper. I
7 am saying do you remember being there and seeing
8 the bridge closed during the day?

9 A. I don't remember.

10 Q. I am going to show you a picture that was
11 previously marked as Montanino 8.

12 MR. TORCZYNER: Counsel, I can send you a
13 copy by e-mail, but these are copies that I
14 have.

15 MR. HANNIGAN: No problem. Thank you.

16 BY MR. TORCZYNER:

17 Q. Put it on the table, and I will ask you questions.

18 Do you see the French vehicle in this picture?

19 A. Yes.

20 Q. Is that the vehicle that the Troy Police with the
21 30 on the back?

22 A. Correct.

23 Q. Do you see the Thevenin vehicle in this picture?

24 A. Yes.

1 Q. Is that the dark colored Honda that is at an angle
2 to the French vehicle?

3 A. Yes.

4 Q. Is the French vehicle in the position it was in
5 when you saw it pulled to block the Thevenin
6 vehicle?

7 A. Yes.

8 Q. To your knowledge, did it move in any way after
9 that?

10 A. I don't believe so.

11 Q. Is the Thevenin vehicle in the position it was in
12 after it rolled forward after Thevenin was shot?

13 A. Yes.

14 Q. Show you another picture that was marked as
15 Montanino 10, a photograph. Let me know when you
16 are done, please.

17 A. Yes.

18 Q. Do you see the Thevenin vehicle in this picture?

19 A. Yes.

20 Q. Is that vehicle in the position it was in after it
21 rolled forward?

22 A. Yes.

23 Q. And the French vehicle was in the position it was
24 in when it blocked the Thevenin vehicle?

1 A. Yes.

2 Q. Thank you.

3 MR. TORCZYNER: Mark this, please.

4 (Gross Exhibit 6 was marked for
5 identification.)

6 BY MR. TORCZYNER:

7 Q. I am going to show you now a picture that has been
8 marked as Gross 6. The same copy that your lawyer
9 is looking at. I have an extra copy for him. Do
10 you see the French vehicle in this picture?

11 A. Yes.

12 Q. Is it in the same position that it was in when it
13 moved to block the Thevenin vehicle?

14 A. Yes.

15 Q. Is the Thevenin vehicle in the same position it was
16 in after it rolled forward after he was shot?

17 A. Yes.

18 Q. Thank you.

19 MR. HANNIGAN: This is 7 and 6?

20 MR. TORCZYNER: This was Gross --

21 MR. HANNIGAN: Oh, I'm sorry.

22 MR. TORCZYNER: Yeah.

23 BY MR. TORCZYNER:

24 Q. Did you ever hear of a Detective Pat Bornt?

1 A. No.

2 Q. Did you ever hear of a Captain Sprague?

3 A. Yes.

4 Q. Did you ever have any conversations with Captain
5 Sprague?

6 A. I don't remember.

7 Q. Did you ever hear of a Captain Joe Centanni?

8 A. Yes.

9 Q. Did you ever have any conversations with Captain
10 Joe Centanni?

11 A. Yes.

12 Q. Did you talk to Joe Centanni about the Thevenin and
13 French incident?

14 A. Yes.

15 Q. What do you recall about those conversations?
16 Withdrawn.

17 Was it more than one conversation, or just
18 one?

19 A. Just one.

20 Q. What do you recall about the conversation?

21 A. I was trying to get the conversation with the
22 guy -- can I look at my notes?

23 Q. When you say your notes. Are you talking about the
24 statement you gave to the Attorney General's

1 Office?

2 A. Yes.

3 Q. If you think that would refresh your recollection
4 as far as the conversation with Joe Centanni.

5 A. I just want to make sure it was the right cop that
6 called me to talk about the statement.

7 (The witness is perusing the document.)

8 Okay.

9 Q. Now that you have reviewed Gross 5, which is the
10 statement to the Attorney General's Office, did
11 that refresh your recollection as far as your
12 conversation with Joe Centanni?

13 A. Yes.

14 Q. What do you recall about your conversation with Joe
15 Centanni?

16 A. I remember receiving a phone call from Centanni
17 asking me to come down to go over my statement, and
18 that he didn't want to see anything happen to my
19 business or my family. I felt kind of threatened.

20 Q. About how long after the first statement that you
21 gave at the Police Department did you get this
22 call? By all means.

23 A. Two weeks maybe.

24 Q. This is after the grand jury has already no true

1 billed Randall French?

2 A. Yes.

3 Q. Did you tell anyone that Joe Centanni had called
4 and said that he didn't want to see anything happen
5 to your family or your business?

6 A. I believe I told my attorney.

7 Q. Well, any conversations that you had with your
8 attorney, I don't want to know about. I mean, you
9 have told me what you said, but if he said anything
10 to you in response, please don't share that with
11 us. Your conversations with your attorney are
12 between you and your attorney. I am sure he
13 explained it to you, but I am saying it too.

14 A. My brother.

15 Q. What about your brother?

16 A. I informed him of my conversation with Centanni.

17 Q. Did he know Centanni?

18 A. Yes.

19 Q. What was his impression of Centanni?

20 MR. HANNIGAN: Objection. If you know.

21 THE WITNESS: Don't know.

22 BY MR. TORCZYNER:

23 Q. You are being paid to be here today?

24 A. Losing money by being here today.

1 Q. Okay. But I need you to answer the question I am
2 asking.

3 A. No.

4 Q. Were you promised anything in exchange for your
5 coming here to testify today?

6 A. No.

7 Q. I thank you for coming down, and subject to
8 questions that counsel for the defendants may have,
9 I may ask a few after that, but in other words, I
10 am finished with my questions for the afternoon.

11 MR. ASPLAND: Okay.

12 MR. HANNIGAN: Take a break for minute?

13 I am sure you have questions.

14 (A short recess was taken.)

15 BY MR. ASPLAND:

16 Q. Mr. Gross, my name is John Aspland. I represent
17 the City and the Police Department in this case. I
18 am going to ask you some questions. Same-ground
19 rules as he went over with you. If you don't
20 understand my question, let me know.

21 When you gave your statement, which is marked
22 as Gross 5, the one you gave to Ron Enfield?

23 A. Yes.

24

1 Q. Can you tell me how that came about that the
2 Attorney General's Office came to you and you gave
3 that statement?

4 A. He contacted me in person at my business.

5 Q. Ron did?

6 A. Yes. Ron and -- I can't remember the guy's name.

7 Q. Patroski (phonetic)?

8 A. No. Karam.

9 Q. With a K?

10 A. Yeah.

11 MR. TORCZYNER: The witness is showing a
12 business card.

13 MR. ASPLAND: I was going to read it.
14 Antwon Karam, K-A-R-A-M. And his title is
15 Deputy Chief Investigations Division, phone
16 number 776-2529, and it looks like it is the
17 seal of the New York State Attorney General
18 Police.

19 MR. HANNIGAN: Show me a copy of that
20 card.

21 MR. ASPLAND: We can before we leave,
22 we can make a copy.

23 BY MR. ASPLAND:

24 Q. Tell me how that conversation started.

1 A. He was informed that I was a witness to the
2 shooting, and he would like me to come down to give
3 a statement.

4 Q. You said they came to your place and made contact
5 with you?

6 A. Yes.

7 Q. So which location are we talking about?

8 A. 630 Hoosick Street.

9 Q. That's not currently your place of business;
10 correct?

11 A. No. Correct.

12 Q. Right. And before you were at 630 Hoosick Street,
13 did you have a place in Menands?

14 A. Yes.

15 Q. What was the address in Menands?

16 A. 563 Broadway.

17 Q. How long were you at the 563 Broadway, Menands
18 location?

19 A. Two years.

20 Q. Do you remember what two years it was?

21 A. No.

22 Q. If I told you it was 2007 or 2009, would that
23 refresh your recollection?

24 A. Yeah.

1 Q. Okay. So you are at your place of business and
2 Enfield and Karam come to you; right?

3 A. Correct.

4 Q. And they say that they are aware of the fact that
5 you are a witness to something; right?

6 A. Correct.

7 Q. Did they tell you what they thought you were a
8 witness to?

9 A. Edson Thevenin shooting.

10 Q. Did they have a copy of what we marked today as
11 Gross Exhibit 3 with them?

12 A. No.

13 Q. Which is your statement that you gave to the Troy
14 PD?

15 A. No.

16 Q. How long were they at your shop?

17 A. Ten minutes.

18 Q. And what did they say to you while they were at the
19 shop during this ten minutes?

20 A. They asked me if I can come down and give a
21 statement.

22 Q. Okay. What did you say?

23 A. That I will speak to my attorney, get a hold of me
24 or you guys contact me. That's my number.

1 Q. Did you ultimately go to the place where Mr. Karam
2 and Mr. Enfield asked you to come?

3 A. Yes.

4 Q. Where was that?

5 A. State building in Albany.

6 Q. Do you remember which one?

7 A. The one in the middle.

8 Q. Okay. In the plaza; correct?

9 A. Yeah.

10 Q. Was it the Justice Building, do you remember that
11 being the case, or no?

12 A. I don't know what building.

13 Q. Did you go to an office where the New York State
14 Attorney General is located?

15 A. Yes.

16 Q. Did you ever speak to a woman named Jennifer
17 Sommers while at that building?

18 A. Yes.

19 Q. Okay. Was she present when you gave your
20 statement?

21 A. Yes.

22 Q. Okay. Did she give you any information that
23 appears in the statement, which is marked as
24 Exhibit 5?

1 A. This is what?

2 Q. Did she provide you with any information that
3 ultimately made its way into the Exhibit 5?

4 A. No.

5 Q. Okay. Did anyone give you information that was
6 then included in Exhibit 5?

7 A. No.

8 Q. Are all the words included in Exhibit 5 your words
9 and no one else's?

10 A. Correct.

11 Q. Okay. Can you explain to me how you went down
12 there on May 5th and gave this statement? You
13 drove down by yourself?

14 A. Correct.

15 Q. And was Mr. Hannigan with you?

16 A. Yes.

17 Q. Was anybody else there?

18 A. Yes.

19 Q. Who else was there?

20 A. Two investigators.

21 Q. Other than Karam and Enfield?

22 A. Yes.

23 Q. So it was Karam, Enfield, Jen Sommers,
24 Mr. Hannigan, you, and who else?

1 A. I don't know who else, the guy's name.

2 Q. Did you get their card?

3 A. Out of New York. I don't know which guys.

4 Q. Okay. Do you have their cards though?

5 A. This is the people I talked to.

6 Q. You talked to them about what?

7 A. That were involved in this. They brought their
8 electronic guys or IT guys to get the video off my
9 phone.

10 Q. Just for the record, we are going to make a copy of
11 those cards just to clear everything up. You
12 handed me a card for a Paul Clyne, whose card reads
13 that he is the Deputy Chief Special Investigations
14 and Prosecutions Unit of the New York State Office
15 of the Attorney General. And you gave me a card
16 for a Mitchell Paurowski, P-A-U-R-O-W-S-K-I. His
17 card reads he is an investigator in the
18 Investigations Division. Then you gave me a card
19 for a Nicholas Viorst, V-I-O-R-S-T. His card reads
20 Deputy Chief Special Investigations and
21 Prosecutions Unit, New York State Attorney
22 General's Office. His business address is New York
23 City. Mr. Paurowski's address is the capital in
24 Albany. Mr. Clyne's address is the capital in

1 Albany.

2 Did you speak to anybody else?

3 A. No.

4 Q. When any of these individuals that you talked to
5 met with you, did they tell you what they wanted
6 you to say?

7 A. No.

8 Q. Did they ask you anything about why Gross Exhibit
9 Number 3 is different in its account of what
10 occurred than what you put down in Gross Exhibit
11 Number 5?

12 A. No, because I told them I wanted to change
13 something I stated.

14 Q. Do you remember a while ago when Neil was asking
15 you some questions about what you wanted to change?

16 A. Correct.

17 Q. You said you wanted to change that Mr. Thevenin was
18 on the ground as opposed to in the car in Exhibit
19 3?

20 A. Correct.

21 Q. When you were trying to get back to talk to Ray
22 White to make that change that you referenced in
23 those text messages, do you remember that
24 testimony?

1 A. Correct.

2 Q. That was truthful; right?

3 A. Correct.

4 Q. He asked you if that was the only thing you wanted
5 to change and you said yes. Do you remember that
6 testimony?

7 MR. TORCZYNER: Objection. I am not sure
8 that was the only thing I asked.

9 THE WITNESS: I said there might have
10 been something else. I believe there was two
11 things. I would have to -

12 BY MR. ASPLAND:

13 Q. All right. Do me a favor, pull Exhibit 3, Gross
14 Exhibit 3. So just so we are clear. Gross Exhibit
15 3 is a typewritten statement; correct?

16 A. Yes.

17 Q. Your name is listed as Phillip E. Gross at the top;
18 right?

19 A. Correct.

20 Q. Date of birth, [REDACTED] right?

21 A. Right.

22 Q. That's your date of birth; right?

23 A. Yes.

24 Q. Cellphone [REDACTED] that's correct?

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- 1 A. Yes.
- 2 Q. Home address -- or home phone number, [REDACTED]
- 3 right?
- 4 A. Correct.
- 5 Q. Occupation, business owner, that's you; right?
- 6 A. Yes.
- 7 Q. Residing at [REDACTED] Green Island,
- 8 New York, that's you; right?
- 9 A. Yes.
- 10 Q. The time you gave this statement, you were 34 years
- 11 old?
- 12 A. Correct.
- 13 Q. It reads at the beginning, follow through with me a
- 14 little bit: On 4/17/2016 no later than 3:30 a.m, I
- 15 was driving on Route 7 coming into Troy. That's
- 16 accurate; right?
- 17 A. Correct.
- 18 Q. I could see lights and hear sirens as I got into
- 19 Troy; is that also accurate?
- 20 A. Correct.
- 21 Q. I stopped just before 8th Street because I thought
- 22 the cops were going to go up Hoosick Street; is
- 23 that accurate?
- 24 A. Yes.

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1 Q. Yes, right?

2 A. Yes.

3 Q. I could see the cops loop around and go to get on
4 the highway. See that part?

5 A. Yes.

6 Q. Is that accurate?

7 A. Yes.

8 Q. I saw a cop car stopped sideways with a black Honda
9 behind it; right?

10 A. Correct.

11 Q. I also saw a second police car stop behind the
12 black Honda; that's correct, right?

13 A. Correct.

14 Q. I heard an impact and thought the guy hit a cop
15 car; that's accurate?

16 A. Yes. They came around the barrier.

17 Q. Did you say that in the statement?

18 A. They didn't ask.

19 Q. Did you say it?

20 A. What?

21 Q. Did you tell the police that?

22 A. I told them there was an impact as they came around
23 the barrier.

24 Q. Do me a favor. Go to the bottom of the first page.

1 A. Yes.

2 Q. See where it says: False statements made herein
3 are punishable of Class A misdemeanor pursuant to
4 Section 210.4 of the Penal Law of the State of
5 New York?

6 A. Sure do.

7 Q. You knew you were giving an official report to the
8 police when you did this?

9 A. Right.

10 Q. It says: I heard some yelling, that was accurate?

11 A. Yes.

12 Q. Okay. I then heard gunshots, and I took my phone
13 out and started taking a video; is that accurate?

14 A. Correct.

15 Q. I could hear the cop yelling, "My leg, my leg," is
16 that accurate?

17 A. Yes. That's what I was talking about yelling when
18 I say I heard some yelling.

19 Q. Gotcha. I realize the cop was hurt and I didn't
20 know where the second cop was; that's accurate?

21 A. Correct.

22 Q. I jumped out of my truck and ran over to help the
23 cop; that's accurate?

24 A. Correct.

1 Q. As I got there, I could see the Honda had bullet
2 holes in the windshield; is that accurate?

3 A. Correct.

4 Q. The cop was pinned between the two cars, and I
5 could see his leg was trapped; is that accurate?

6 A. Correct.

7 Q. I could see there was a black male in the driver
8 seat of the Honda; is that accurate or inaccurate?

9 A. Inaccurate.

10 Q. What would be the accurate statement?

11 A. The driver was on the ground.

12 Q. That's what you wanted to talk to Ray White about;
13 correct?

14 A. Correct.

15 Q. I started trying to get the car off the cop; that's
16 accurate?

17 A. Yep.

18 Q. I saw the second cop pull the black male out of the
19 car and jump in the driver's seat; is that
20 accurate?

21 A. No.

22 Q. What's accurate?

23 A. Cop jumping in the driver's seat.

24 Q. Because the black guy is already out?

1 A. Correct.

2 Q. I think the second cop tried to back the Honda up
3 but it wasn't working; is that accurate?

4 A. Correct.

5 Q. We were able to move the car back inch by inch; is
6 that accurate?

7 A. Correct.

8 Q. Another cop showed up and started to help; is that
9 accurate?

10 A. Correct.

11 Q. I think the cop's boot was stuck on some metal of
12 the car and the other cop cut his boot; is that
13 accurate?

14 A. Correct.

15 Q. Once we got the cop free between the cars, I left
16 to complete my call; is that accurate?

17 A. Correct.

18 Q. I was on my way to do a tow call when all this
19 happened, and as soon as I was done with the tow I
20 went back and gave my information to a Troy police
21 officer; is that accurate?

22 A. Correct.

23 Q. Now, the end of that last you said a Troy police
24 officer, you didn't say Matthew Montanino; right?

1 A. Correct.

2 Q. I came to the police station to give my statement;
3 is that accurate?

4 A. Correct.

5 Q. Did anyone force you to come to the police station
6 on the day you gave the statement?

7 A. No.

8 Q. In fact, you went about your business that day and
9 came back later in the day to do so; correct?

10 A. No.

11 Q. We will get to that.

12 While I was at the station, Sergeant McMann
13 asked me for consent to copy the video from my
14 phone; is that accurate?

15 A. Correct.

16 Q. I signed a consent form and Sergeant White copied
17 the video; is that accurate?

18 A. Correct.

19 Q. I only took the one video, I did not take any
20 picture; is that accurate?

21 A. As far as what?

22 Q. You see a line on the bottom of that second page?

23 A. Sure do.

24 Q. Looks like two letters next to that line?

1 A. My initials.

2 Q. Is that your handwriting?

3 A. Yes.

4 Q. Is that your signature at the bottom of the page?

5 A. Yes.

6 Q. Let's go to the top of the first page for a second.

7 You were at the scene of the Collar City Bridge
8 incident no later than three-thirty in the morning;
9 right?

10 A. Correct.

11 Q. Then I think you previously testified you were
12 there for a few minutes, then you left and went
13 about your business to do your call; right?

14 A. Correct.

15 Q. So you see the bottom of the first page?

16 A. Yes.

17 Q. It says 10:50 a.m?

18 A. Yes.

19 Q. How long did it take you to do a tow call for the
20 New York State Police generally?

21 A. I was back home in bed, 4:15, 4:30 back to my
22 house.

23 Q. Where did you store the car when you towed it from
24 the scene?

1 A. In the back of the tow truck.

2 Q. You got a flatbed tow truck?

3 A. Yes.

4 Q. Do you still have the paperwork for that tow in the
5 shop or somewhere else?

6 A. Probably.

7 Q. I am just going to ask if you do, don't throw it
8 away. All right? Preserve it for us, okay? Fair
9 enough?

10 A. Absolutely.

11 Q. So look at Exhibit Number 2 for me. Do you see at
12 the bottom of Exhibit number 2, it says, 10:02 a.m?

13 A. Correct.

14 Q. Right. That's not your handwriting where it says
15 10:02; is it?

16 A. No.

17 Q. Do you know what time you got to the Troy Police
18 station on the 17th?

19 A. Maybe 9:30, quarter of ten.

20 Q. You told counsel during your testimony earlier that
21 you were there for about a half hour, does that
22 help you remember about what time you got there?

23 A. Yes.

24 Q. You think about 9:30, quarter of ten?

1 A. Yes, about.

2 Q. Go back to Exhibit 3 now for a minute. You see at
3 bottom it says 10:50 a.m?

4 A. Yes.

5 Q. So would you agree with me that the time recorded
6 on Exhibit 3 is approximately 48 minutes or so
7 after the time that is recorded on Exhibit 2?

8 A. Yes.

9 Q. Do you agree with me on the math on that?

10 A. Yes.

11 Q. Does that sound about right the time you were
12 there?

13 A. Yes.

14 Q. You completed Exhibit 3 around 10:50 in the
15 morning; right?

16 A. That's probably when.

17 Q. About when you signed it?

18 A. Yes. Well, after I gave this, it took them 15
19 minutes to find a way to get it off my phone.

20 Q. Okay. So you didn't leave the station at 10:50;
21 right?

22 A. Probably around there, because as I was leaving
23 they had me sign the stuff.

24 Q. So walk me through it. You are telling Detective

1 McMann and Detective Sergeant Ray White what you
2 saw earlier that day on the Collar City Bridge;
3 right?

4 A. Correct.

5 Q. And they typed up Exhibit 3; right?

6 A. Correct.

7 Q. All right. And they, except for the part where
8 Thevenin was either in the car or out of the car,
9 you just told me the rest of this is accurate;
10 right?

11 A. Yeah. Another part in there that wasn't.

12 Q. What was the other part that wasn't accurate?

13 We went line by line. We had two spots where
14 it referred to Mr. Thevenin being in or out of the
15 car, and whatever is in the statement it should
16 have been the opposite?

17 A. Right.

18 Q. Other than that, the rest of it is accurate; right?

19 A. Yes.

20 Q. And you still think it's accurate; right?

21 A. Yes.

22 Q. And you told us earlier that's your signature at
23 the bottom of the page 1 and the bottom of page 2;
24 right?

- 1 A. Correct.
- 2 Q. No one forced you to sign this document; correct?
- 3 A. Correct.
- 4 Q. No one forced you to go back to the police station
- 5 to give this statement; correct?
- 6 A. Correct.
- 7 Q. In fact, you had gone home, and went to bed, and
- 8 then got up later in the day and went back to the
- 9 Troy Police Department on your own to give a
- 10 statement; right?
- 11 A. Correct. It was to stop calling my mom's house.
- 12 Q. How many times did they call your mom's?
- 13 A. Three or four times.
- 14 Q. Do you live at your mom's house?
- 15 A. No.
- 16 Q. Do they know where you live?
- 17 A. No.
- 18 Q. Where does Brian live?
- 19 A. I don't know.
- 20 Q. You don't know where your brother lives?
- 21 A. I'm not sure.
- 22 Q. Does he live at your mom's house or somewhere else?
- 23 A. I'm not sure.
- 24 Q. Okay. So you go back on the 17th, and you fill out

1 this consent to search, and you give a statement
2 and you sign a statement that you acknowledge
3 carries with it a Class A misdemeanor if you give a
4 false statement; right?

5 A. Correct.

6 Q. Okay. Then did you testify at the grand jury?

7 A. Yes.

8 Q. Okay. Did you meet with the District Attorney's
9 Office to prepare for the testimony that you were
10 going to give?

11 A. Meet with the DA?

12 Q. Either Joel Abelove or Ms. Hall?

13 A. No.

14 Q. Or anybody else? No?

15 A. I didn't go to the grand jury.

16 Q. You didn't testify at the grand jury involving
17 Randy French's shooting?

18 A. No.

19 Q. Did anybody talk to you about maybe coming and you
20 changed your mind?

21 A. Abelove.

22 Q. What did he say?

23 A. He called me ten o'clock, quarter of ten at night
24 asking me to come down in the morning. He knew

1 there was something I wanted to change, and go over
2 my statement before the building opened up, or I
3 forgot how he worded it.

4 Q. What came of all that?

5 A. Nothing. I contacted my attorney and --

6 Q. You never went down to meet with Mr. Abelove?

7 A. No.

8 Q. You never testified in the grand jury?

9 A. No.

10 Q. You never got a subpoena to testify in the grand
11 jury?

12 A. No.

13 Q. Have you had any contact with anybody who
14 represents the Thevenin family?

15 A. No.

16 Q. Have you ever had any contact with anybody who said
17 they were some kind of private investigator?

18 A. No.

19 Q. Did there ever come a time where the State Police,
20 I will call them the state investigators, how is
21 that, because there is a bunch of different
22 agencies that you gave me cards for, is that fair?

23 A. I knew all them from the AG's office.

24 Q. So the AG's people?

1 A. Correct.

2 Q. Did they come to you and say we needed you to give
3 a statement, or did they ask you if you wanted to
4 give a statement, or something else?

5 A. They asked me if I would come down and give a
6 statement.

7 Q. Okay. Did you tell them you had already given a
8 statement?

9 A. Yes.

10 Q. What did they say?

11 A. I don't remember exact words, but I told them there
12 was something there that I needed to change.

13 Q. And today you told us the thing you wanted to
14 change was that Thevenin was not in the vehicle at
15 the time that you got there, he was actually on the
16 ground --

17 A. Yes.

18 Q. -- right? You would have to agree with me that the
19 pages of -- the six pages of Gross' 5, which is
20 your statement that you gave on May 5th, 2016 at
21 10:45 at night, that is different than what you
22 told the Troy PD; right?

23 A. Correct.

24 Q. Now, let me ask you this. The video that you took,

1 you didn't alter that video that you saw today at
2 all; right?

3 A. I have no way to.

4 Q. So you even still have a copy of it on your phone?

5 A. Yes.

6 Q. Do you have any photographs on your phone?

7 A. No.

8 Q. But the State Police told you that you took a
9 photograph; right?

10 A. Correct.

11 Q. Did you state, did the AG's people tell you that
12 here is a copy of the photograph, we took it off
13 your phone?

14 A. No.

15 Q. Did you give them a consent to search your phone?

16 A. Yes.

17 Q. Did they take your phone away from you and bring it
18 back?

19 A. No.

20 Q. What happened?

21 A. They plugged it into a thing, into the computer.

22 Q. And did what?

23 A. And uploaded the video.

24 Q. Did they say they uploaded any photographs?

1 A. No.

2 Q. Okay. Why did you put that there was a photograph
3 on your phone of what was going on in Gross 5 if
4 there isn't?

5 A. I don't know.

6 Q. Take a look at Gross 5, that's your statement to
7 the AG's office. Look at the page where you say
8 there is a photograph.

9 A. Which page is that on?

10 Q. I think it is page 2, about five lines down.

11 A. It says I think I may have meant to take a picture
12 and send it to my wife.

13 Q. No. It says: I think this may be when I took a
14 picture to send it to my wife. Says you took a
15 picture to send it to your wife. The timing of
16 which you think was at a certain point in time in
17 the action, so to speak. Did you actually take a
18 picture?

19 A. Says I -- I am just reading.

20 Q. Can you see the sentence I am directing you to?

21 A. Yes.

22 Q. Is that an accurate sentence or not?

23 A. As he was getting out of the car, I may have taken
24 my phone out to take a picture of what was going on

1 and gunshots rang out. That's when I started the
2 video. It doesn't say I took a picture and sent it
3 to my wife.

4 Q. It says I think this may be when I took a picture
5 to send to my wife, that's what it says; right?

6 A. About taking my phone out. I think they asked me
7 the question whatever, why I had the phone.

8 Q. This is -- let me be clear. This is your sworn
9 statement to the Attorney General's office that you
10 gave voluntarily a couple of weeks after you gave a
11 sworn statement to the Troy PD; right?

12 A. Okay.

13 Q. Is that true?

14 A. Yes.

15 Q. Okay. So you read this statement and signed it
16 under the penalty of perjury; correct?

17 A. Correct.

18 Q. Just like you did for the one for the Troy PD --

19 A. Yes.

20 Q. -- right? All right. And this statement on page 2
21 says in part, because it is a very long page: I
22 had my window open on my truck. And I think this
23 may be when I took a picture to send to my wife.

24 So my question just simply is: Is that

1 sentence an accurate sentence of what occurred?

2 A. Yes.

3 Q. All right. So you took a picture?

4 A. Yes.

5 Q. Where is it?

6 A. I have no idea.

7 Q. Did the AG's office take it?

8 A. No idea.

9 Q. Did they advise you that they found a picture?

10 A. Yes.

11 Q. Did you ever see it?

12 A. No.

13 Q. All right. So it then says: When the dark colored
14 car backs up and hits the unmarked car, almost
15 simultaneously I hear gunshots.

16 Do you see where I read that?

17 A. Yes.

18 Q. When the gunshots went out, I started to switch
19 over to video.

20 So as he was shooting, you switched to video?

21 A. Yeah.

22 Q. Okay. We watched the video; right?

23 A. Yes.

24 Q. Did we see any gunshots happening?

1 A. No.

2 Q. Did we hear any gunshots happening?

3 A. No.

4 Q. How many shots had been fired of the eight to
5 twelve shots that you testified to, how many shots
6 had been fired at the time you switched over to
7 video?

8 A. All of them.

9 Q. So you switched over to video after the shots were
10 fired?

11 A. After the shots were fired.

12 Q. Then you went to video?

13 A. Right.

14 Q. I am trying to get clear here because these
15 statements are really different. So I am just
16 trying to understand what is going on.

17 A. You understand this is a six hour statement and it
18 ended at 11 o'clock at night after my day started
19 at four o'clock in the morning. 11 o'clock at
20 night when they handed it to me to sign, here you
21 go.

22 Q. You signed it?

23 A. All honesty.

24 Q. I hear you. So you spent six hours to give a

1 six-page statement; right?

2 A. Yes.

3 Q. You spent about a half hour on the 17th, and gave a
4 one and a half page statement to the Troy PD?

5 A. Yes.

6 Q. On the 17th, that was actually the day all this
7 happened; right?

8 A. Correct.

9 Q. And it was fresh in your mind at the time on the
10 17th when you gave your statement?

11 A. It was in my mind. I couldn't believe what I saw.

12 Q. Okay. So let's get into it a little bit on the
13 video. Just so I am clear, you are saying just
14 from the sequencing standpoint, correct me if I get
15 this wrong, shots are fired, then -- shots are
16 fired and they end, you are now on video; right?

17 A. Correct.

18 Q. You are videoing the scene, and we looked at that
19 earlier today?

20 A. True.

21 Q. When the shots end, the black Honda rolls three to
22 four feet forward, and then pins Randy French
23 against the rear driver's side of his patrol
24 vehicle; that's correct?

1 A. It is 100 percent correct.

2 Q. Why isn't that shown on the video?

3 A. Because it happened within a second or two.

4 Q. So the video is not accurate in portraying what you
5 captured?

6 A. Video is hundred percent accurate.

7 Q. Okay. So how did it come to be the case that the
8 car rolling toward, rolling, it wasn't being driven
9 toward; him; right?

10 A. Correct.

11 Q. How is it the case that the car rolling towards
12 Officer French isn't captured on the video if at
13 the end of the shots being fired you're videoing
14 what happened next?

15 A. Maybe the first shot killed him.

16 Q. No. That wasn't -- I'm sorry. My question was a
17 bad question. I am trying to figure out how a car
18 that's rolling forward, not being driven forward,
19 but rolling forward, isn't captured on the video if
20 some time passed between when the shots were fired
21 and then when the car rolled forward and pinned
22 Officer French. That's what I am trying to figure
23 out, why that's not on the video?

24 A. I don't know.

1 Q. Is it possible because it didn't actually happen
2 that way?

3 A. No.

4 Q. Okay. Because you can't tell me why it is not on
5 the video?

6 A. I wasn't quick enough with my thumb.

7 Q. I got you. So when -- were you watching Randy
8 French stand there and let this car roll into him
9 and pin him against the car?

10 A. Yes.

11 Q. Did it look like he had his eyes closed and didn't
12 see the car coming?

13 A. Do I think he had his eyes closed? How can I tell
14 that?

15 Q. I don't know. You were the guy that was there.

16 A. I don't know.

17 Q. The Thevenin vehicle is rolling four feet. How
18 fast is it rolling now, what speed?

19 A. Five, ten miles an hour. Couple miles an hour
20 maybe. I don't know.

21 Q. It's rolling couple miles an hour, it is going to
22 close a distance of no more than four feet; right?

23 A. Right.

24 Q. And is Randy French just standing there waiting to

1 get crushed, or does he seem distracted to you,
2 doing something else, or what's going on?

3 A. He fired a service weapon into his windshield.
4 Could have hit him with the first round and the car
5 started rolling forward, but the shots are still
6 ringing out. I don't know what shot killed him. I
7 need a break.

8 Q. That's fine. Take a break.

9 (A short recess was taken.)

10 BY MR. ASPLAND:

11 Q. I am not trying to give you a hard time. I am
12 trying to understand what is going on here.

13 A. You understand it is 18 months. I own my own
14 business. A lot of stuff going through my head.

15 Q. Same thing here. So when you gave the statement
16 that's marked as Gross' Exhibit 5, which is the one
17 you gave to the AG's office, it took them six hours
18 to handwrite out these six pages; is that what you
19 are saying?

20 A. Correct.

21 Q. And this isn't your handwriting; correct?

22 A. Correct.

23 Q. This is Ron Enfield's handwriting; correct?

24 A. Right.

1 Q. Did it go like this: You would say something, then
2 Ron Enfield would reword it and handwrite it out
3 and ask you did that work or is that close, or
4 something to that affect?

5 MR. TORCZYNER: Objection.

6 THE WITNESS: I don't remember.

7 BY MR. ASPLAND:

8 Q. These aren't all exactly your words though, are
9 they?

10 A. Pretty much.

11 Q. Pretty much your words?

12 A. Yes. That's what I said then.

13 Q. That's what you said then, but that's not what you
14 said on the 17th; correct?

15 A. No.

16 Q. Okay. Let's go -- see that picture right there,
17 Exhibit 6, just so we have a little perspective.
18 See the sign that says Hoosick Street?

19 A. Yes.

20 Q. It is pointing straight down?

21 A. Right.

22 Q. There is a ramp coming uphill at that point; right?

23 A. Yes.

24 Q. So you are coming up Hoosick Street when this

1 all -- when you first see what is going on?

2 A. That is --

3 Q. Hoosick Street, the sign pointing down, where the
4 white police vehicle is?

5 A. Underneath.

6 Q. Goes underneath the bridge?

7 A. Yes.

8 Q. It is a slope going down towards River Street;
9 right?

10 A. Yes.

11 Q. You are driving up the slope on Hoosick Street?

12 A. Going the opposite way.

13 Q. Right. Trying to get some perspective.

14 A. Yes.

15 Q. Neil has never been there so as I am talking about
16 this picture, I am trying to give him some
17 perspective here.

18 A. Yes.

19 Q. Am I right on how I am describing it?

20 A. Yes.

21 Q. So you see that yellow sign with the two arrows
22 that are pointing?

23 A. Correct.

24 Q. All right. When you first saw the police lights,

1 was your truck downhill from that yellow sign or
2 something else?

3 A. Directly across from it.

4 Q. When you first saw the lights, you were directly
5 across from it?

6 A. Yes.

7 Q. All right. Why were you at a stop?

8 A. Because I heard lights and sirens, I seen the
9 reflection off them concrete barriers and blackout.

10 Q. You see the white police truck that's parked on the
11 photograph on the far side of the barrier?

12 A. Yes.

13 Q. Is that where your car was when you first saw what
14 was going on?

15 A. No.

16 Q. Where was your car?

17 A. On the other end of it, other side. The two lanes
18 come off.

19 (Discussion off the record.)

20 BY MR. ASPLAND:

21 Q. Don't look at me. Don't worry.

22 A. As I was talking with people in the eye.

23 Q. She is the important one so --

24 Okay. So you said earlier that you were about

1 50 feet away from the shooting when you what, first
2 noticed it or when you recorded it?

3 A. Both.

4 Q. Or something else?

5 A. Both. I was stopped.

6 Q. Stopped. Okay. So where that white police vehicle
7 is, you were further away from the scene than where
8 that -- where that vehicle is depicted in this
9 photograph; right?

10 A. Correct.

11 Q. How many barriers did you have to jump over to get
12 to where the vehicles, the police vehicle and Edson
13 Thevenin's vehicle?

14 A. Two.

15 Q. How many lanes of traffic did you have to cross?

16 A. Two.

17 Q. Okay. Just so we are clear, you see that wrong way
18 sign?

19 A. Yes.

20 Q. You are over on that part of the bridge; correct?

21 A. Correct.

22 Q. So you had to cross the barrier, two lanes of
23 traffic, and hop another barrier to get over to
24 where the police vehicle and the Thevenin vehicle

1 are?

2 A. Correct.

3 Q. You are videotaping from over in that lane of

4 traffic; right?

5 A. Correct.

6 Q. Are you in the left-hand lane or right-hand lane?

7 A. Left.

8 Q. What kind of truck do you have? What kind of truck

9 do you have?

10 A. '97 GMC.

11 Q. Sierra?

12 A. Pickup truck, yeah.

13 Q. Crew cab or extended?

14 A. Extended cab.

15 Q. Regular length bed?

16 A. Yeah.

17 Q. Six or eight feet?

18 A. Six.

19 Q. So you are driving to Hoosick, to 630 Hoosick to

20 get your tow truck, all this goes down. What is

21 the lighting condition like at the time? Dark

22 light?

23 A. Dark out. I mean, street lights, and then you got

24 the lights from the cop cars.

1 Q. You said they were blinding?

2 A. Correct.

3 Q. So with all that going on, you saw that black car
4 roll no more than four feet forward at a couple
5 miles an hour and pin the officer against the back
6 of his car?

7 A. Correct.

8 Q. And that's not recorded on that video that we saw
9 at all; right?

10 A. Correct.

11 Q. And you took that phone and put it in your pocket
12 when you ran over there?

13 A. Correct.

14 Q. Were you wearing a jacket, a sweatshirt?

15 A. Sweatshirt.

16 Q. Probably like what you got on?

17 A. Probably the one I got on.

18 Q. Did you throw it in the slide pocket in the front?

19 A. Yes.

20 Q. We can hear a little muffled in the audio; right?

21 A. Yes.

22 Q. Now, why didn't you go back to the Troy Police
23 Department on -- well, let me withdraw that for a
24 second.

1 Take a look at Gross 4. Those are your text
2 messages with Marty Furcinitti; right?

3 A. Correct.

4 Q. At some point you went and talked to Marty's wife
5 as well; right?

6 A. Correct.

7 Q. Do you know them?

8 A. Yes.

9 Q. Personally?

10 A. Yes.

11 Q. What is his wife's name?

12 It doesn't matter.

13 A. I don't know.

14 Q. How did you have Marty's cellphone number?

15 A. Known him for years.

16 Q. Okay. He was one of Brian's buddies?

17 A. Yes.

18 Q. They worked on the force together; right?

19 A. Yes.

20 Q. Now, you didn't mention in that text message
21 exchange really what you wanted to change; did you?

22 A. No.

23 Q. Why not?

24 A. I didn't need to.

1 Q. Do you think it was important?

2 A. Yes.

3 Q. Do you think it was important to change the
4 information so it was accurate?

5 A. Yes.

6 Q. Why didn't you tell Marty what you wanted to
7 change?

8 A. Spell it all out in the text message?

9 Q. Asking why you didn't?

10 A. Didn't need to. I already told him I wanted to
11 change something.

12 Q. Why didn't you go back to the Troy PD and just say
13 I would like to change my statement, I remembered
14 something?

15 A. Because I go to work everyday.

16 Q. There is other people that work there with you;
17 right?

18 A. So I go in and do what this person says and I want
19 to change and every time I got to come back when
20 Detective White is there. Why am I going to waste
21 my time? I am a businessman. I don't have time
22 even to be sitting here right now, to be honest
23 with you.

24 Q. I hear you. You didn't go do that though?

- 1 A. No.
- 2 Q. You didn't think it would be worth it to go and try
3 and switch the version you wanted to switch out?
- 4 A. I reach out to cop. I tried reaching out to Ray
5 White.
- 6 Q. What did Ray say when he called you back?
- 7 A. I apologize for not contacting your brother back
8 and I apologize for not getting back to you soon
9 enough.
- 10 Q. Did you tell him: Hey, I want to change my
11 statement?
- 12 A. Yes.
- 13 Q. Did you go to the Troy PD to do that?
- 14 A. No.
- 15 Q. Did he tell you not to?
- 16 A. They wanted me to come down.
- 17 Q. Why wouldn't you go?
- 18 A. Advised by my attorney.
- 19 Q. So you had information that you thought was
20 important enough that you wanted to change your
21 written statement that you gave to the Police
22 Department in an investigation involving an officer
23 involved shooting, and you didn't go down and give
24 that statement because of whatever reason, I don't

1 care what your attorney told you, but you didn't
2 go; right?

3 A. Correct.

4 Q. So why did you go to the AG's Office and give Gross
5 Exhibit Number 5?

6 A. They came to me.

7 Q. You could have told them you didn't want to give a
8 statement, tell them you already gave one; why
9 didn't you do that?

10 A. And grand jury is already over with, this guy has
11 got two kids, and didn't deserve to die because
12 they shouldn't have pulled the trigger. Somebody
13 didn't know the truth.

14 Q. Why didn't you tell the truth the first time?

15 MR. HANNIGAN: Objection.

16 BY MR. ASPLAND:

17 Q. Did you tell the truth in Exhibit --

18 A. I wasn't asked.

19 Q. -- 3? That's not my question. My question is: Is
20 Exhibit 3 truthful statement that you gave?

21 A. To some point.

22 Q. So you lied partially in Exhibit 3 by omitting
23 certain facts?

24 MR. HANNIGAN: Objection.

1 THE WITNESS: No.

2 BY MR. ASPLAND:

3 Q. So then explain to me how that all works out?

4 A. What worked out?

5 Q. How you decided not to put certain information in
6 Exhibit 3?

7 MR. HANNIGAN: Objection.

8 THE WITNESS: One person asked me a
9 question. This person say hey, come look at
10 that. This person said this, oh, thanks for
11 pulling the car off the top, went back to my
12 statement.

13 BY MR. ASPLAND:

14 Q. At no point in time did you think it was important
15 to mention that the shots were fired and then
16 Officer French became pinned between the vehicles?

17 A. They didn't ask. Made a quick description of what
18 happened, and that's exactly what I did. I went
19 home and went to bed.

20 Q. Listen to my question.

21 A. Listen to my answer.

22 Q. At any time did you feel it was important to state
23 that the shots had already been fired, and then the
24 car rolled into Officer French?

1 A. Yes.

2 Q. Why didn't you?

3 A. Nobody called me back.

4 Q. Why didn't you do it when you went there?

5 A. I wasn't asked, like I just told you.

6 Q. They asked you to briefly say what happened. You
7 didn't think that was important?

8 A. I told them what happened.

9 Q. You didn't think that was important? Yes or no?

10 A. No.

11 Q. Did you think that was important? No?

12 A. It is important, yes.

13 Q. When they said briefly describe what happened, did
14 you not think it was important to include that
15 information?

16 A. What information?

17 Q. I will answer it to clarify the question for you.
18 That the shots were fired, then the car rolled into
19 the officer, did you not think that information was
20 important for the Troy PD to know?

21 A. No. They didn't ask. Asked me to give a brief
22 description.

23 Q. In your mindset, as you are processing what
24 happened and what you saw, and they said --

1 A. I am processing the black guy sitting in front of
2 me dead with bullet holes in his head.

3 Q. Eight of them; right?

4 A. Correct. That's what I am processing.

5 Q. You are upset about that?

6 A. Exactly.

7 Q. You are so upset about it that you went back on May
8 5th and you gave a statement to the Attorney
9 General's Office, and you laid all this out because
10 you had some ping of conscious guilt that said I
11 should tell this story; right?

12 A. Right. That's when I set up the appointment. I
13 had softball going on with my kid. I couldn't make
14 it down there when I wanted to. Yeah, I got a busy
15 life.

16 Q. But you didn't think it was important, for whatever
17 reason, morally, factually to be accurate, the fact
18 that you have given a written statement to the
19 police on April 17th, whatever the reason, you
20 didn't think it was important on April 17th to
21 include in your brief description of what occurred
22 the fact that you now say that the shots had ended
23 and then the car rolled in and pinned Officer Randy
24 French; is that what you are saying?

1 A. I wasn't asked. And there was like 15 cops in the
2 room. You think I am going to open like that? Not
3 a good thing. My business is in Troy. DOT stops
4 all the time in Troy. They ain't messing with my
5 family and my business.

6 Q. Let me ask you this. How many cops were in the
7 room when you gave a statement to the AG?

8 A. Two, three.

9 Q. You see all the cards you handed out that we made a
10 photocopy of?

11 A. Yes.

12 Q. You understand that those are all officers?

13 A. I know it.

14 Q. And it is the State Attorney General's Office;
15 right?

16 A. Correct.

17 Q. At this point in time you know they are unhappy
18 with Joel Abelove; right?

19 A. I don't know if happy --

20 Q. I am asking you. Did you know they were unhappy
21 with Joel Abelove at that point?

22 A. No.

23 Q. You didn't hear the news, you didn't see the TV
24 station reporting on that?

1 A. They want to address it for the guy's wife.

2 Q. Are you trying to help the kid's wife get justice?

3 A. I am trying make it so the wife knows her husband
4 didn't deserve to die.

5 Q. Do you understand that your statement is
6 contradicted by the physical evidence at the scene?

7 MR. HANNIGAN: Objection.

8 BY MR. ASPLAND:

9 Q. Do you understand that?

10 A. Yes.

11 Q. Okay. And it is still your statement --

12 A. Yes.

13 Q. -- right? And the video doesn't support what you
14 said either; right? Right?

15 A. That's what you said.

16 Q. I am asking you. Based on your review of this
17 video, does it support what you put in that
18 statement?

19 A. Yes.

20 Q. It does. Okay. Have you ever seen a car roll
21 uphill?

22 A. Car roll uphill?

23 Q. Yes.

24 A. No.

1 Q. So in your statement you say you heard the
2 gunshots, then you started taking the video; right?
3 That's what you said?

4 A. Yes.

5 Q. And you have no reason why you didn't give a
6 detailed statement to the Troy PD at any time prior
7 to going in on May 5th?

8 A. Because they didn't ask me, to be honest.

9 MR. HANNIGAN: Objection.

10 THE WITNESS: And the dude said something
11 about my brother in there to piss me off, and
12 I wanted to get out of there, to be honest
13 with you. I didn't talk to anybody about it.
14 McAvoy and Abelove.

15 BY MR. ASPLAND:

16 Q. What did they say?

17 A. I got to go to work. I am being honest with you.
18 I got to get out of here.

19 Q. We are going to finish when we finish.

20 A. We are going to finish when I am done.

21 Q. You will come back. So why don't we just finish
22 up?

23 What did McAvoy and Abelove say about your
24 brother?

- 1 A. Don't know.
- 2 Q. You can come back and repeat it. For know I am
- 3 asking you.
- 4 A. Don't remember.
- 5 Q. You said it pissed you off. What pissed you off?
- 6 A. Don't remember.
- 7 Q. Don't remember?
- 8 A. Don't remember.
- 9 Q. You know you are under oath; right?
- 10 A. I am under oath.
- 11 Q. You just told me that they said something to piss
- 12 you off; correct?
- 13 A. I don't remember what they said.
- 14 Q. What did it pertain to?
- 15 A. My brother.
- 16 Q. What about him?
- 17 A. Don't know.
- 18 Q. You don't know what pissed you off what they said
- 19 about your brother?
- 20 A. Don't remember.
- 21 Q. That's what you are saying? But not something you
- 22 were thinking prior to the Troy PD?
- 23 A. Don't remember.
- 24 Q. Did it have something to do with Captain Centanni

1 investigating him?

2 A. Don't remember.

3 Q. We can do this for like hours, if you want. You
4 want to do that? We can do this for hours. I am
5 asking --

6 A. I have a business to run with five daughters to
7 support.

8 Q. If you leave, you are going to get to come back.

9 A. Why don't we take a few minutes?

10 Q. Take as many minutes as you like. I am trying to
11 get the answer to a couple of questions here so we
12 can finish this out.

13 (The witness left the room.)

14 MR. ASPLAND: I was going to be courteous
15 and let him out by five o'clock. But if he
16 doesn't want to answer the questions, he can
17 stay. I don't care. I have the right to ask
18 this gentleman some questions. He is making
19 statements that are both inflammatory and I
20 believe to be injurious, and I am going to ask
21 him about it. Okay?

22 If he doesn't want to answer them, I
23 guess he can leave. If he leaves, I am going
24 to compel him to come back. So if you would

1 like to go talk to him. I have no problem.
2 He just walked out of the room. It's now
3 3:35. Our intention was to be done by five
4 o'clock. That was what we had discussed with
5 you about trying to get this done.

6 Understanding he owns a business. I am not
7 trying to make this a hardship. I am trying
8 to get to an understanding as to why he gave
9 two different versions of what perceived by
10 many to be the same event. That's all.

11 MR. HANNIGAN: I think he is answering
12 your question to the best of his ability. You
13 asked the same question different ways. I
14 think you're intentionally trying to get under
15 his skin.

16 MR. ASPLAND: That is not my intention.
17 If that's the perception, I apologize. I am
18 trying to get some answers to some very
19 significant differences in what appears be two
20 sworn statements. That's all. I was
21 confronted in a very long statement about my
22 brother -- they said something about my
23 brother pissed me off, and then when he didn't
24 want to talk about why his brother Brian Gross

1 is no longer a Troy police officer, he
2 conveniently started to not have a
3 recollection of what they said and he walked
4 out of the room.

5 That's where we are. I am happy to move
6 on. I just need to know if he is coming back.

7 MR. HANNIGAN: Give me a few minutes.

8 MR. ASPLAND: Fair enough.

9 (Discussion off the record.)

10 BY MR. ASPLAND:

11 Q. Mr. Gross, let me see if I can ask a couple more
12 questions. I am really not trying to upset you. I
13 know some of this is upsetting. I just want to ask
14 you a few more questions.

15 Why didn't you take Captain Centanni up on his
16 offer to come in and give a supplement to your
17 statement?

18 A. I felt threatened.

19 Q. What about the conversation that he had with you
20 made you feel threatened?

21 A. He didn't want to see nothing happen to my family
22 and my business.

23 Q. Has anything ever happened to your family or your
24 business by the Troy PD?

1 A. No.

2 Q. Okay. Why did you think something might happen?

3 A. Because I heard hearsay that because I want to
4 change something in my statement, they are going to
5 try to get me on perjury if I didn't cooperate with
6 them or however.

7 Q. Who told you that hearsay?

8 A. Friends at softball who have an affiliation with
9 the Troy PD.

10 Q. I am not trying to put you on the spot here. Who
11 at softball, do you remember who said that to you?

12 A. Don't remember.

13 Q. Do you remember who at the Troy PD said something
14 to them?

15 A. I don't remember.

16 Q. Okay. Other than that statement that you heard
17 from a friend in softball, was there any other
18 reason to believe that something might happen to
19 you or your family at all?

20 A. The fact that what the police were saying and what
21 really happened, two different stories.

22 Q. What are the police saying?

23 A. That he drove into him and then he was fired.

24 Q. No. You are saying that absolutely didn't happen?

1 A. Correct.

2 Q. Okay. Now, other than the fact that your version
3 of what occurred is different than the police
4 version of what occurred, and what you have already
5 told me about what your friend from softball
6 said --

7 A. Correct.

8 Q. -- was there any reason that you felt threatened
9 that something could happen to your family or to
10 you other than what you have said to me so far?

11 A. No.

12 Q. That's it?

13 A. Yes.

14 Q. Okay. Did you testify at the grand jury that's
15 currently impaneled to hear a case against Joel
16 Abelove?

17 A. Yes.

18 Q. Who prepped you for your testimony for that grand
19 jury?

20 A. Jennifer,

21 Q. Sommers?

22 A. Yes.

23 Q. Anybody else?

24 A. Ron Enfield.

1 Q. What did Ron Enfield say to you in preparation for
2 that grand jury testimony?

3 A. I don't remember.

4 Q. What did Jennifer Sommers say to you?

5 A. Don't remember.

6 Q. Did they have you review anything other than the
7 statement that you gave on May 6th or whatever?

8 A. Review my statement and make sure the video was --

9 Q. May 5th, I'm sorry.

10 A. -- what it was.

11 Q. So they showed you the video that we watched today?

12 A. Correct.

13 Q. And they showed you your statement that we have
14 marked as Gross Exhibit 5; right?

15 A. Correct.

16 Q. Did you review anything else?

17 A. No.

18 Q. How long did that prep session take?

19 A. Maybe an hour.

20 Q. Where did they do it?

21 A. AG's office.

22 Q. The one that you went to before?

23 A. Yes.

24 Q. Did they give you a subpoena to come into the grand

1 jury?

2 A. Yes.

3 Q. Did they ask you if you would voluntarily come?

4 A. No.

5 Q. They just sent you a subpoena, come to the grand
6 jury on whatever day?

7 A. Yes.

8 Q. Did they pay you to come down and prep with them?

9 A. No.

10 Q. Did you prep with them the same day you testified?

11 A. No.

12 Q. Did you testify before the grand jury in Albany or
13 was it in Rensselaer County?

14 A. Rensselaer.

15 Q. The courthouse?

16 A. Yes.

17 Q. Do you know Harry Tutungian?

18 A. Yes.

19 Q. T-U-T-U-N-G-I-A-N, close enough.

20 How do you know -- he is the former mayor of
21 Troy?

22 A. Yes.

23 Q. How do you know him?

24 A. He was my landlord.

1 Q. When?

2 A. 2009 to 2015.

3 Q. What was the address that he owned?

4 A. 630 Hoosick Street.

5 Q. Okay. And how did it come to be the case that you
6 moved out of the 630 Hoosick Street address?

7 A. They were building Cumberland Farms.

8 Q. So he sold the property?

9 A. Leasing it to somebody developing it.

10 Q. And you moved your business location to somewhere
11 else?

12 A. Correct.

13 Q. Now the lawsuit that you have against the City of
14 Troy, what is that in relation to?

15 A. Plow truck hit my vehicle.

16 Q. Do you know where the status of that case is?

17 A. No.

18 Q. Was it a plow truck that hit your vehicle during
19 the winter?

20 A. Yes.

21 Q. During while it was plowing?

22 A. Yes.

23 Q. And did you ever have another lawsuit with the
24 city?

1 A. No.

2 Q. Did you ever have any issue with the city over not
3 getting a tow contract?

4 A. Yes.

5 Q. What was the issue you had with the city about not
6 getting a tow contract?

7 A. There was no issue.

8 Q. You put it but you didn't get it?

9 A. Still waiting on it. I was actually called back to
10 do towing for the city, and put out the bid for
11 again for April, and still waiting.

12 Q. They put it out to bid this past April for this
13 coming snow season?

14 A. Last April.

15 Q. Like April '17 for this winter into '18?

16 A. No. '16.

17 Q. Got you. Okay.

18 A. Actually --

19 Q. We are in '17, so that's why I thought it was '17.

20 A. Yeah, '17.

21 MR. TORCZYNER: He is going to correct
22 that. It was April '17 for 2018; correct?

23 MR. ASPLAND: Winter.

24 THE WITNESS: This is in March. They

1 call me down to the city and put out the bid.
2 Supposed to be effective April 1st. April 1st
3 to be in the end, and March they still haven't
4 made that decision.

5 BY MR. ASPLAND:

6 Q. Are you aware of anyone else who saw what you saw
7 that night?

8 A. No clue.

9 Q. Have you ever talked to Cinthia Thevenin?

10 A. No.

11 Q. Have you ever talked to Edson Thevenin's brother?

12 A. No.

13 Q. Have you ever met anybody from Edson Thevenin's
14 family?

15 A. No.

16 Q. Did you go to school in Troy?

17 A. No.

18 Q. Green Island?

19 A. No.

20 Q. Where did you go to school?

21 A. Watervliet.

22 Q. Watervliet. Did you know that is where Edson
23 Thevenin was living?

24 A. Watervliet?

1 Q. Yes.

2 A. Yes.

3 Q. Do you know where he works or where he lived?

4 A. No.

5 MR. ASPLAND: I don't think I have
6 anything further. I appreciate it.

7 MR. TORCZYNER: A few follow-up questions
8 for you. I will keep this brief.

9 BY MR. TORCZYNER:

10 Q. The document that is marked as Gross 3, which was
11 that first statement that was given at the Troy
12 Police Department. You were asked about the time.
13 It says 10:50 a.m. at the bottom?

14 A. Correct.

15 Q. Was that time on there when you signed it?

16 A. No.

17 Q. As we sit here today, do you know whether you
18 finished at 10:50 a.m?

19 A. I have no idea what time we finished.

20 Q. Is there anywhere in this statement that is Gross 3
21 that you can see where it indicates that the
22 Thevenin vehicle hit Randy French?

23 A. No.

24 Q. So they didn't -- they had you sign this statement,

1 they asked you to sign this and you signed it?

2 A. True.

3 Q. Even though there is nowhere in the statement that
4 talks about Thevenin's car hitting Randy French?

5 A. Correct.

6 Q. And they didn't ask you to put that anywhere in the
7 statement; correct?

8 A. Correct.

9 Q. Okay. Just one last question about Captain
10 Centanni. What did he say to you about your
11 family?

12 A. He didn't want to see anything happen to my family,
13 with me or my business.

14 Q. And you took that seriously?

15 A. Absolutely.

16 MR. TORCZYNER: I have got nothing
17 further.

18 MR. ASPLAND: One question.

19 BY MR. ASPLAND:

20 Q. Counsel was asking you about the fact they didn't,
21 by that I mean the Troy PD, that they didn't ask
22 you to put into your statement anything about Edson
23 Thevenin's vehicle hitting Randy French. Do you
24 remember that from a minute ago?

1 A. Correct.

2 Q. Did they ask you to put anything in your statement
3 that you didn't voluntarily put in your statement?

4 A. No.

5 MR. ASPLAND: Nothing further. Thanks.
6 That's it. Done.

7 MR. TORCZYNER: Your attorney is going to
8 get a copy of all the exhibits that we used
9 today. He is also going to get a copy of a
10 transcript book. And he will give you further
11 instructions about what to do with that book.
12 Thank you for coming down.

13 (The examination of Phillip Gross was
14 concluded at 3:55 p.m.)
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I N D E X O F E X H I B I T S

GROSS EXHIBITS	DESCRIPTION	PAGE
1	Subpoena	6
2	Authorization form	38
3	Statement dated 4/17/16	40
4	Text messages	50
5	Statement to Attorney General Office	55
6	Photograph	

(Mr. Torczyner kept all original
exhibits.)

1
2 STATE OF NEW YORK)

3 SS.:
4

5
6 COUNTY OF)

7 I have (heard) read the foregoing record
8 of my testimony taken at the time and place noted
9 in the heading hereof and I do hereby acknowledge
10 it to be a true and correct transcript of the same.
11

12 _____
13 Phillip Gross
14

15 Sworn to before me this _____
16 day of _____, 2017.
17

18 _____
19 NOTARY PUBLIC
20
21
22
23
24

AMF REPORTING SERVICES, INC.
(518) 982-1341

1
2 C E R T I F I C A T I O N
3

4 I, PEGGY ALEXY, Shorthand Reporter and
5 Notary Public in and for the State of New York, do
6 hereby CERTIFY that the foregoing record taken by
7 me at the time and place noted in the heading
8 hereof is a true and accurate transcript of the
9 same, to the best of my ability and belief.

10
11
12
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14 _____
15 PEGGY ALEXY
16

17 DATED: November 9, 2017
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AMF REPORTING SERVICES, INC.
(518) 982-1341

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City of Troy Police Department

Response To Resistance Report

* ALL RELATED ORIGINAL REPORT(S) SHALL BE ATTACHED*



Control Number : 38338 Date/Time of Incident: 04/17/2016 0312 Officer Name: Sgt. R. French

Incident Location: 6th Avenue between Jacob Street and Hoosick Street

City: Troy

State: NY

Zip Code: 12180

OFFICER INFORMATION (Each Officer Using Force)

Name: Sgt. Randall French ID: 7163

Medical Treatment Required: ☒ YES* ☐ NO If Yes, Injury/Workers Comp. Paperwork Completed ☒

*Describe Injury: Left knee pinned between patrol vehicle and suspect vehicle.

☐ Treated On Scene/Station ☒ Transported ☒ Treated/Released ☐ Admitted To Hospital ☐ Other: _____

Medical Facility/Treating Physician: AMCH ER

Photographs Taken of Injury: ☒ YES ☐ NO If Taken, Photographer: Officer Furniniti

Duty Status (At Time of Incident): ☒ On-Duty ☐ Off-Duty

SUSPECT INFORMATION

Name: Edson Thevenin Date of Birth: _____

Address: _____ City: Watervliet State: NY

Sex : Male Race: Black Phone : unknown

Charges: N/A Co-Defendants: N/A

☐ No Injury ☐ Complaint of Injury ☒ Visible Injury

Medical Treatment Required: ☒ YES* ☐ NO Medical Treatment Refused: ☐

*Describe Injury: Multiple gun shot wounds

☒ Treated On Scene/Station ☒ Transported ☐ Treated/Released ☐ Admitted To Hospital ☐ Other: _____

Medical Facility/Treating Physician: St. Mary's ER

Photographs Taken of Injury: ☒ YES ☐ NO If Taken, Photographer: ET

WITNESS INFORMATION

Did Any Officer(s) Witness The Response To Resistance? ☒ YES ☐ NO Name(s): Captain Montanino

Did Any Civilian Witness The Response To Resistance? ☐ YES ☒ NO Statement(s) Taken? ☐ YES ☐ NO

(Identify Name, Address, Phone and Indicate If A Statement Was Taken)

Witness #1: _____

Witness #2: _____

Witness #3: _____

Control Number : 38338 Date/Time of Incident: 04/17/2016 0312 Officer Name: Sgt. R. French**RESISTANCE**

Verbal

Passive Physical

Active Physical

Aggressive Physical

Aggressive Physical

RESPONSE

Presence

Communication

Physical Control

Deadly Force

If 'Other' is selected, explain:

SUSPECT FACTORSSex: Male

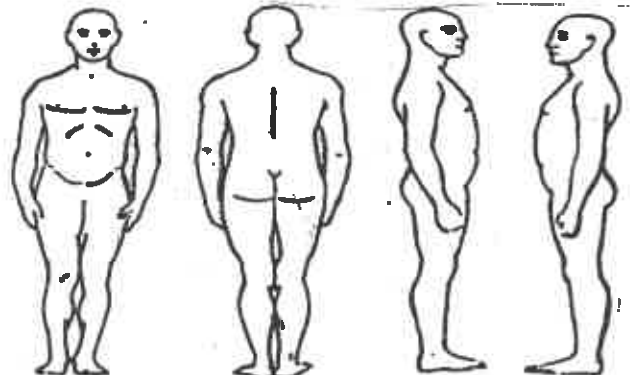
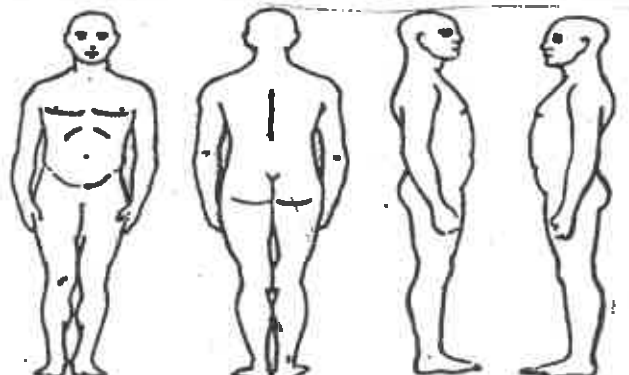
Under the influence of:

Drug: ☐ YES ☐ NO ☒ UnkHeight: 6'00"Alcohol: ☒ YES ☐ NO
☐ UnkWeight: 255Unk. Substance: ☐ YES ☐ NO
☒ UnkAge: 37Mental Health: ☐ YES ☐ NO
☒ Unk**SUSPECT WEAPONS**☐ HANDS☐ CHEMICAL☐ FEET☐ FIREARM☐ IMPACT☒ VEHICLE☐ EDGED☐ OTHER: _____**OFFICER RESPONSE (Check All That Apply)**☒ Physical Presence☒ Verbal Commands
☐ Not Applicable☒ Soft/Empty Hand Control
☐ Not Applicable☐ Canine Partner
(See attached canine deployment report)**Restraint Devices**☐ Handcuffs☐ Double-Lock☐ Leg Restraints☐ Other: _____☒ Not Applicable**Escort Techniques**☐ Come Along☐ Bent Wrist☐ Pressure Point☐ Shoulder Lock☐ Other: _____☒ Not Applicable**Takedowns**☐ Arm Bar☐ Bent Wrist☐ Pressure Point☐ Shoulder Lock☐ Leg Sweep☐ Other: _____☒ Not Applicable**Strikes**☐ Punch☐ Palm Heel☐ Hammer Fist☐ Forearm☐ Elbow☐ Knee Strike☐ Leg Kick☐ Other: _____☒ Not Applicable

Control Number : 38338

Date/Time of Incident: 04/17/2016 0312

Officer Name: Sgt. R. French

<p style="text-align: center;"><u>Baton</u></p> <p><input type="checkbox"/> Forehand Strike</p> <p><input type="checkbox"/> Backhand Strike</p> <p><input type="checkbox"/> Closed Baton Strike</p> <p><input checked="" type="checkbox"/> Not Applicable</p>	<p style="text-align: center;"><u>Handheld OC</u></p> <p><input type="checkbox"/> Full Incapacitation</p> <p><input type="checkbox"/> Partial Incapacitation</p> <p><input checked="" type="checkbox"/> No Apparent Effect</p> <p>If Used, Approx. Distance: <u>1'-2'</u></p> <p><input type="checkbox"/> Not Applicable</p>	<p style="text-align: center;"><u>Pepperball OC</u></p> <p><input type="checkbox"/> Full Incapacitation</p> <p><input type="checkbox"/> Partial Incapacitation</p> <p><input type="checkbox"/> No Apparent Effect</p> <p>If Used, Number of Projectiles: _____</p> <p>Approx. Distance: _____</p> <p><input checked="" type="checkbox"/> Not Applicable</p>
<p><input type="checkbox"/> X26 Taser <input type="checkbox"/> X26P Taser</p> <p><input type="checkbox"/> Drawn With No Laser Display</p> <p><input type="checkbox"/> Probe Deployment <input type="checkbox"/> Drive Stun <input type="checkbox"/> Laser Display Only</p> <p>At the time of this report:</p> <p>Deployment Distance: _____ ft Number Of Cycles: _____</p> <p><input type="checkbox"/> Effective <input type="checkbox"/> Not Effective Number of Cartridges Fired: _____</p> <p>X26/X26P Serial Number: _____ Cartridge Serial: _____</p> <p>Distance Between Probe Impact (If Used): _____</p> <p>Did Both Darts Penetrate Skin? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Did Only Top Dart Penetrate? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>Did Only Bottom Dart Penetrate? <input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><input checked="" type="checkbox"/> Not Applicable</p>		<p style="text-align: center;"><u>Duty Firearm</u></p> <p><input checked="" type="checkbox"/> Pistol <input type="checkbox"/> Shotgun <input type="checkbox"/> Rifle</p> <p>Pointed Only? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</p> <p>At the time of this report:</p> <p>Number Of Shots <u>8</u></p> <p>Number Of Hits To Target <u>5</u></p> <p>Shots Accounted For <u>8</u></p> <p>Shots Unaccounted For <u>0</u></p> <p>Weapon Model: <u>Kimber</u></p> <p>Weapon Serial: <u>K267789</u></p> <p>Weapon Secured Into Evidence?</p> <p><input checked="" type="checkbox"/> YES <input type="checkbox"/> NO</p> <p><input type="checkbox"/> Not Applicable</p>
<p>Circle The Area(s) Of Impact And/Or Injury</p> <p>On The Diagrams Below</p>		
<p>OFFICER</p>		<p>SUSPECT</p>
		

Control Number : 38338

Date/Time of Incident: 04/17/2016 0312

Officer Name: Sgt. R. French

Response To Resistance Narrative
☐ Original
☐ Follow-Up

☐ Continued
☐ Rtr Narrative
 Report Attached

Please include and describe any of the response to resistance techniques which were utilized but were not effective.

RO advised the suspect that he was under arrest for DWI and to turn around and place his hands behind his back. After hesitating the suspect complied. RO grabbed both of his the suspect's hands with both of RO's hands to put them together back to back for handcuffing. The suspect started pulling his hands away and RO gave repeated orders to stop resisting. The suspect continued to pull and then said "Fuck this" and pulled both of his hands away from RO. RO grabbed the back of the suspect's sweatshirt and tried to pull him backwards. The suspect continued to walk to his vehicle. RO then deployed OC to the right side of the suspect's face. RO continued to pull rearward on the suspect's clothing in an attempt to prevent him from getting into his car. Despite RO's efforts the suspect was able to get into the driver's seat of his vehicle. RO attempted to place the suspect's left arm in an arm bar against the door frame; however, he was able to twist it away. RO again deployed OC to the suspect's face. RO pushed on the upper torso of the suspect with RO's right hand and forearm in order to make room for RO to lean in and try to prevent the suspect from turning the vehicle on. The suspect was able to turn the vehicle on and before RO could reach the gear shift the suspect began driving northbound in 6th Avenue with RO still in the vehicle. RO pushed out of the car and fell in the roadway. RO pursued the vehicle which subsequently crashed W/B on the Collar City Bridge. RO exited his patrol car in order to arrest the suspect. The suspect then drove into RO and pinned RO's left knee against his patrol vehicle. The suspect continued to keep the engine revved in an attempt to continue driving. RO tried to pull himself free but was unable to do so. As RO felt his leg was about to break which he believed would cause him to fall under the suspect's vehicle and be killed RO fired two rounds through the windshield at the suspect. The suspect turned the car and continued to keep the engine revved. This turn caused RO's left leg to twist and forced RO onto the hood of the suspect's vehicle. As RO's leg was still pinned and RO could see the suspect turning the steering wheel and he continued to keep the engine revved RO fired 6 more shots through the windshield at the suspect. The suspect was then taken into custody by other officers.

Officer Signature: _____ **Date:** _____

Control Number : 38338 Date/Time of Incident: 04/17/2016 0312 Officer Name: Sgt. R. French

ENVIRONMENTAL FACTORSTraffic

*OUTDOOR LOCATION TYPES ONLY

☒ Light ☐ Moderate ☐ Heavy
☐ Pedestrian ☐ Vehicle ☐ Road Construction

Lighting Conditions

☐ Daylight ☐ Dusk/Dawn ☒ Night
☐ Well-Lit ☒ Low-Light ☐ No Light

Location Type (Inside)

Address: 6th Avenue b/w Jacob St and Hoosick St.

Description: Roadway

N/A: ☐Location Type (Outside)

Closest Address: _____

Description: _____

N/A: ☒Weather☒ Clear ☐ Rain ☐ Snow ☐ Fog ☐ Ice ☐ Dry ☐ Wet**Video Review**Video Available: ☐ YES ☐ NO

Video Reviewed By: _____ Date: _____

Video Preserved By: _____ Date: _____ Disposition: _____

*** ALL RELATED ORIGINAL REPORT(S) SHALL BE ATTACHED*****REVIEW**

Patrol Sergeant: Same

ID: _____ Date: _____

Patrol Sergeant On-Scene: ☐ YES ☐ NO

Signature: _____

Comments:

Commanding Officer: Captain Montanino

ID: 5774 Date: _____

Commanding Officer On-Scene: ☒ YES ☐ NO

Signature: _____

Comments:



City of Troy Police Department

Post-Pursuit Report



Control Number : 38338 Date/Time of Incident: 04/17/2016 0312 Officer Name: Sgt. R. French

Incident Location: 6th Avenue between Jacob Street and Hoosick Street

City: Troy

State: NY

Zip Code: 12180

ORIGINATION INFORMATION

Reason For Pursuit: Suspect was advised he was under arrest for DWI. He then resisted arrest and fled in his vehicle.

Originating Officer: Sgt. R. French Vehicle & Radio Identifier: TPD 30 - 112

Point of Origin: 6th Avenue between Jacob Street and Hoosick Street

Assisting Officer(s): Captain Montanino

Command Officer Approving Pursuit: Captain Montanino

TERMINATION INFORMATION

Point of Termination: W/B Collar City Bridge

During Pursuit:

Weather Conditions: Clear Roadway Conditions: Dry

Pedestrian/Vehicular Traffic Conditions: Light

Reason(s) For Termination (Select All That Apply):

- ☐ Operator Compliance
 ☐ Danger To Officer or Public
 ☐ Arrest
 ☐ Commanding Officer Directive
 ☐ Lost Sight Of Vehicle
 ☒ Other: Suspect crashed

Damage To Vehicle(s) [Include Vehicle Number & Description of Damage]:

1) TPD 30 - scrapes and dents all along driver's side

2) Patrol Captains' Vehicle - damage to front bumper and grill

3) _____

4) _____

TPD Personnel Injured: Sgt. French

Civilians Injured: None

Control Number : 38338Date/Time of Incident: 04/17/2016 0312Officer Name: Sgt. R. French**Post-Pursuit Report Narrative**☐ Original☐ Follow-Up

*Attach all related reports. Do not reproduce information contained in other reports, i.e. MV-104A, Arrest Report, etc.
Confine your reporting to the pursuit process only.*

Suspect fled from above location after RO attempted to arrest him for DWI. RO radioed the situation and that the suspect was north on 6th Avenue. Officer Dean requested a vehicle description which RO provided. RO radioed that the suspect turned east on Hoosick Street. Captain Montanino then stated he would call the pursuit. The suspect turned W/B onto the Collar City Bridge. When RO turned onto the bridge RO observed that the suspect crashed into the left side of the bridge. RO placed his vehicle in front of the suspect's vehicle in order to prevent him from driving away and continuing the pursuit.

Officer Signature: _____ Date: _____

Commanding Officer Signature: _____ Date: _____

EXHIBIT "L"

**CELL PHONE VIDEO TAKEN BY PHILLIP GROSS
SUBMITTED VIA REGAULAR MAIL ON CD
TO THE COURT AND OPPOSING COUNSEL**

Control #: 38338-16

Phone:

DEPOSITION OF A WITNESS
STATE OF NEW YORK
COUNTY OF RENSSELAER
CITY OF TROY



Home: [REDACTED]

Work:

Cell: [REDACTED]

Name: Phillip E. Gross

Date of birth: [REDACTED]

Residing at: [REDACTED] Green Island, NY

Age: 34

Occupation: Business owner

Depose and say:

On 4/17/2016, no later than 3:30 am, I was driving on route 7 coming in to Troy. I could see lights and hear sirens as I got into Troy. I stopped just before 8th Street because I thought the cops were going to go up Hoosick Street. I could see the cops loop around and go to get on the highway. I saw a cop car stop sideways with a black Honda behind it. I also saw a second police car stop behind the black Honda. I heard an impact and thought the guy hit a cop car. I could see a cop standing outside his car. I heard some yelling. I then heard gunshots and I took my phone out and started taking a video. I could hear the cop yelling "My leg, my leg". I realized the cop was hurt and I didn't know where the second cop was. I jumped out of my truck and ran over to help the cop. As I got there, I could see the Honda had bullet holes in the windshield. The cop was pinned between the two cars and I could see his leg was trapped. I could see that there was a black male in the driver's seat of the Honda. I started trying to get the car off the cop. I saw the second cop pulled the black male out of the car and jumped in the driver's seat. I think the second cop tried to back the Honda up but it wasn't working. We were able to move the car back, inch by inch. Another cop showed up and started to help. I think the cops boot was stuck on some metal of the car and the other cop cut his boot. Once we got the cop free from between the cars, I left to complete my call. I was on

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW OF THE STATE OF NEW YORK.

Date: 4/17/16

Time: 10:50AM

Signed: [Signature]

Page: 1 OF 2

Witness: Sgt. [Signature] #6030

Control #: 38338-16

Phone:

DEPOSITION OF A WITNESS
STATE OF NEW YORK
COUNTY OF RENSSELAER
CITY OF TROY

Home: [REDACTED]

Work:

Cell: [REDACTED]

Name: Phillip E. Gross

Date of birth: [REDACTED]

Residing at: [REDACTED] Green Island, NY Age: 34

Occupation: Business owner

my way to do a tow call when this all happened and as soon as I was done with the tow I went back and gave my information to a Troy police officer.

I came to the Troy police station to give my statement. While I was at the station, Sgt. McMahon asked me for consent to copy the video from my phone. I signed a consent form and Sgt. White copied the video. I only took the one video and I did not take any pictures.

P.G.

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE AS A CLASS "A" MISDEMEANOR PURSUANT TO SECTION 210.45 OF THE PENAL LAW OF THE STATE OF NEW YORK.

Date: 4/17/16

Time: 10:50 AM

Signed: [Signature]

Page: 2 of 2

Witness: Sgt. [Signature] 6050

**OFFICE OF THE ATTORNEY GENERAL
INVESTIGATIONS DIVISION
VOLUNTARY STATEMENT**

Page 1 of 6

STATE OF NEW YORK

COUNTY OF ALBANYDate: May 5, 2016 Location: 311 STATE ST. ALBANY, NY Time Started: 7:35 AM/PMI, the undersigned, Phillip E. Gross 3rd am 34 years of age, born on 1/19/81I now reside at [REDACTED] Green Island, NY 12183I have been duly warned and advised by INV. RICHARD M. ENFIELD a person who has identified himself/herself as a Police Officer/Investigator with the New York State Office of the Attorney General, that:

I am currently not under arrest, and that I am free to leave at any time that I so desire.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise, hope or reward, without fear or threat of physical harm upon me or another person, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

On April 17, 2016 at approximately 3:17 AM I received a phone call from the New York State Police for a tow service call. I was to tow a car for them. The was a Longans St. and Pawling Ave. I got dressed, got into my personal vehicle which is a 1997 GMC Pick-up extended cab. I was heading over the Collin City Bridge from Green Island heading east. I was slowing down as I approached the red light. I had my windows down and was smoking a cigarette. As I sat at the red light I heard sirens and saw the red lights. I then saw a white marked police car, changing a dark colored car. Then a dark unmarked car was following. The dark colored car does a U-TURN, he was going East on Hobart Street underneath the bridge 1st. Then does a U-TURN into the Collin City Bridge going west. The white marked police car goes on the outside of the dark colored car and stops in front of the dark colored car. The dark colored car stopped because the white colored police car stopped at an angle in front of the dark colored car. The front of the white marked Police car was facing southwest. The dark unmarked police car was behind the dark colored car at an angle also. I watched the back-up lights go on; this was the car that the police had boxed in. This car backs-up about 3 feet to 5 feet and hits the

I have read this voluntary statement (had this voluntary statement read to me) consisting of 6 page(s), each page of which bears my signature and corrections, if any bear my initials, and I certify that the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

This voluntary statement was completed at 10:45 AM/PM on the 5th day of May, 20 16WITNESS: INV. R. [Signature]

[Signature]
Signature of person giving voluntary statement

WITNESS: _____

Continuation of Voluntary Statement by:

Phillip E. CrossPage 2 of 6.

the unmarked car. I see the police officer at the front of the car that just backed up into the unmarked car. The police officer at the front was about 4 ft away. The police officer at the front had gotten out of his patrol car and was standing near the rear driver's side door of his patrol vehicle. I had my window open on my truck and I think that's maybe when I took a picture to send it to my wife. When the dark colored car backs up and hits the unmarked car almost simultaneously I hear gun shots. When the gun shots went out I started to switch over to video. I thought it was the guy being chased because I never heard the police yelling at this person during the car. I thought the person being chased was shooting at the police. When the shots stopped, that's when I saw the car roll into the police officer. The car rolled about 3 ft forward and pinned the police officer against his car. The police officer was pinned at the rear driver's side door area the rear tire. After the shots stopped, someone grabbed the driver of the vehicle being chased and threw him to the ground. While still in my truck I could hear the police officer yelling for help. That was the only time I heard that police officer say anything. The police officer never said anything to the driver of the car prior to shooting. I then get out of my truck and run over, jumped the concrete barrier and almost landed on the driver of this car. I looked down at this guy and saw blood. The police officer was still yelling for help. Other marked cars arrived. After I jumped the barrier I went to one side of the police car, this would be the side where the police officer driver's side door. Another officer was at the trunk area of the police car. I heard someone say to the person who was at the driver's side door the car that was being chased "Cuff that mother fucker". Officer Marble was trying to pull the police officer out from being pinned. When the officer was out he went to get him free. They slid him over a copy of Post and got the police officer out. The police took that pinned officer out of the area, once this happened I went to leave and someone wanted to put cuffs on me and Officer Marble said NO, "let him go, he helped us". I then went back to my vehicle and drove to my shop to do the tow for the State Police.

I have read this voluntary statement (had this voluntary statement read to me) consisting of 6 page(s), each page of which bears my signature and corrections, if any bear my initials, and I certify that the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

This voluntary statement was completed at 10:45 AM/PM on the 5th day of May, 20 16

WITNESS:

Inv. R. [Signature]

Signature of person giving voluntary statement

WITNESS: _____

Continuation of Voluntary Statement by:

Phillip E. CrossPage 3 of 6

Around 8:15-8:30 AM I got a phone call from the Troy Police Dept. They called my cellphone and my mother's house. The Troy Police called my house 3 times and I finally answered. I spoke with someone by the name of Jack. Jack asked me if I would come over and speak with them about what happened on the bridge. I agreed and drove to the Troy Police Station. I got to the Police Station around 10:30 AM. Once at the Police Station I took a stairwell to the 2nd Fl. A Sgt. White met me and escorted me to the 2nd Fl. Once upstairs I sat in the Detention Bureau office right at a desk. While sitting there, officers were making small talk with me, they asked how my brother was doing and thanked me for helping with getting the car off the officer. I heard someone say, we are not doing anything until someone from the DA's office is here. While sitting there and the detectives were talking I then told them I have video of the incident. Once I said that they literally surrounded me. They got around me because I started showing the video. The officer then moved me over to Sgt. White's desk and that is when I started giving my statement to Sgt. White. The police then called someone to help get the video off my phone and they walked me into a clerk's room. The police watched the video and I was there, and asked me to sign a consent form to get just the video off my phone. The Troy Police used a 35 mm camera to take pictures off my phone. This is when he introduced himself to me. This person I did not know. He said his name was Joel Abbebe, Pennington County, GA. Joel Abbebe asked if he could view the video. I gave him permission to look. We then exited the room and went over to Sgt. White's desk to finish the statement. The Sgt. and Chief McAlary and Abbebe went into a back room and sat at Sgt. White's desk. While giving this statement I was under pressure from them. They made me feel uncomfortable and they sat right around me. I felt like I better say what they want to hear. Sgt. White asked me the majority of the questions, but other officers sitting around were asking questions too. I then heard someone say my brother's name and I got pissed off. I then said I'm not saying anything to anyone else, I'm only talking to Sgt. White. I finished my statement and left the Police Station.

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This voluntary statement was completed at 10:45 AM PM on the 5th day of May, 20 16

WITNESS:



 Signature of person giving voluntary statement

WITNESS:

Continuation of Voluntary Statement by:

Phillip E. CrossPage 4 of 6

The day I gave my statement to the Troy Police I know something was not accurate and I called Troy P.D. desk # and asked for Sgt. White. They told me he was unavailable. I asked for them to have Sgt. White contact me. I waited a couple of hours and then contacted my brother (Baron Cross). My brother made a few phone calls and Sgt. White never got back to me. Around 10:00pm Sunday night Officer Mark Fuccini contacted me and thanked me. I thanked Mark back saying "That shit was crazy. Is the cop doing?" Mark replied "he's doing good; thanks. Send me the video. I just put it into evidence without looking at it." Still in a text I text Mark saying "can I get a copy of my statement?" "I fucked up!" Mark replied "yes I will get it tomorrow tomorrow" and I also sent Mark the video. The next day in a text to Mark, I asked him why my name was released because the media is not my shop. Mark said "don't talk to anyone, just play dumb." "Say you don't know anything." The text started going back forth about how the media already knew when I only spoke with the police. The next contact I have is DA Joel Abetore on 4/21/16 around 12:15pm. Joel Abetore says to me to come down the the Grand Jury tomorrow morning. I told him there are some things that are different from what I am saying had happened to what the Troy Police are saying happened and I wanted to contact my attorney. I told Joel Abetore to contact me back in 20 min. I then shut my phone off. Around 9:40pm on 4/21/2016 I turn my phone back on. Right before 10:00pm my phone rings & I pick up the phone and it's Resurrection County DA Joel Abetore. Joel says "I need you to come down to the Grand Jury tomorrow around 9:00am but he asked me to come earlier to talk about something. I told him to hold on, I'll get to him that I needed to contact my attorney. Joel's response was "what do you need an attorney for you're not in trouble." I told Joel I have to get ahead of him. Joel said can you try to be here around 8:15am, you have my cell to call me when you're out there. I will come out and get you. I then notified my attorney Tawana Harrigan and he told me

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This voluntary statement was completed at 10:45 AM/PM on the 5th day of May, 20 16

WITNESS: Tawana R. Harrigan

X
Signature of person giving voluntary statement

WITNESS: _____

Continuation of Voluntary Statement by:

Phillip E. GrossPage 5 of 6.

he will take care of that and call back in the morning. On 4/22/2016 I never hear from anyone from the Troy Police Dept or the Rensselaer County DA's office. On 4/29/2016 I drove up to Marky Fuccer's house which is behind my shop, while at there making a see Marky's wife and I briefly speak with her about the shooting. Her response was he started firing after he was pinned. I shook my head and said to her he wasn't pinned until he opened fire. She kept saying what do you mean. I told her there is a lot more to this story. On 4/29/2016 2 - Investigators from the Attorney General's Office came to my shop and asked to speak with me. I agreed to meet with them with my attorney present in Albany. Around 3:15pm I received a phone call from Sgt. White saying how am I doing and apologized for not returning my phone call. I let my brother know he is sorry for that. Sgt. White assured me that he did not leak my name and did not give out the video. No one will ever be able to get it out even 7 yrs down the road it will not come out. Sgt. White went to talk to anyone and not to give the video out. Around 4pm I met with Investigators with the Attorney General's Office with my attorney present. On 5/14/2016 around 12:23pm I received a phone call from Capt. Joe Castanni of the Troy Police Dept. Capt. talked about the media, he asked me to come to the Police Station, he heard that I wanted to clarify some things on my statement. I told him this is interfering with my life, he said he would be in my best interest to come down and clarify, I told him I'm not coming down without my attorney and my attorney tells me too. Capt. Castanni then said I wouldn't want anything bad to happen to you and your family and your business, I took that as a threat. I put him on hold, gave him my attorney's #. I've had no contact with the Troy Police Dept or the Rensselaer County DA's office. I am not giving this statement to

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This voluntary statement was completed at 10:45 AM/PM on the 5th day of May, 20 16

WITNESS:

Toru R. [Signature]

Signature of person giving voluntary statement

WITNESS:

Continuation of Voluntary Statement by:

Phillip E. CrossPage 6 of 6.

*to the Attorney General's office to get back at the Long Police Dept
for what they did to my brother I giving this statement because
those kids lost their father and it's been killing me it's all and I
want them to know the truth.*

I have read this voluntary statement (had this voluntary statement read to me) consisting of 6 page(s), each page of which bears my signature and corrections, if any bear my initials, and I certify that the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

This voluntary statement was completed at 10:45 AM/PM on the 5th day of May, 20 16

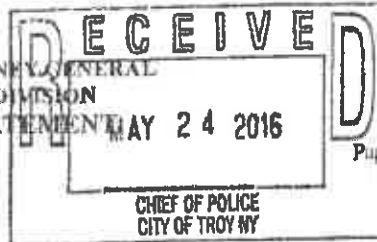
WITNESS:

Tony R. [Signature]

[Signature]
Signature of person giving voluntary statement

WITNESS:

OFFICE OF THE ATTORNEY GENERAL
INVESTIGATIONS DIVISION
VOLUNTARY STATEMENT



Page 1 of 2

STATE OF NEW YORK

COUNTY OF ALBANY

Date: 5/3/2016 Location: 146 STATE ST. ALBANY, NY Time Started: 3:40 AM/PM

I, the undersigned, Keith A. Millington am 21 years of age, born on 994

I now reside at [REDACTED] Co Hoes, NY 12047

I have been duly warned and advised by Mitchell Pezrowski a person who has identified himself/herself as a Police Officer/Investigator with the New York State Office of the Attorney General, that:

I am currently not under arrest, and that I am free to leave at any time that I so desire.

I declare that the following voluntary statement is made to the aforesaid person of my own free will without promise, hope or reward, without fear or threat of physical harm upon me or another person, without coercion, favor or offer of favor, without leniency or offer of leniency, by any person or persons whomsoever.

I would like to say that on Sunday April 17, 2016 at about 2:45 AM I WAS AT A PARTY on River Street in the City of Troy, NY. I don't know the address but it was near the Kennedy Fried Chicken. I was picking up my friend Vincent LaVigne up from the party because he had been drinking and couldn't drive. The Troy Police were at the party breaking it up and so when I got there I got out of my girlfriend's vehicle found Vinnie and we got into his Jeep. It was only me and Vinnie and he got into the passenger front seat. Vinnie's vehicle is a Jeep Wrangler with plastic windows that zip down. I had my window zipped down a little because it was a nice night. We headed down River Street toward the downtown and when I got to Hoosick Street I turned left to head up Hoosick Street because Vinnie was up behind R.P.I. I got to the traffic light at Hoosick Street and 8th Street and the light was red so I stopped. When the light turned green I stalled out the Jeep because it's a stick shift and I've only driven stick 3 times. My girlfriend MATHALYN BERAMAN was behind me with her car and I motioned her to go around me because I kept stalling out. She did and continued up Hoosick Street. As I was sitting at the light with the parking brake on waiting for it to turn green I looked in my rearview mirror and I saw what looked like a green colored Honda coming up fast with no lights on. The car went past me and that's when I saw two Troy cop cars coming

I have read this voluntary statement (had this voluntary statement read to me) consisting of 2 page(s), each page of which bears my signature and corrections, if any bear my initials, and I certify that the facts contained herein are true and correct. I have also been told and I understand that making a false written statement is punishable as a Class A Misdemeanor pursuant to section 210.45 of the Penal Law of the State of New York.

This voluntary statement was completed at 5:10 AM/PM on the 3rd day of MAY, 2016

WITNESS: [Signature]

WITNESS: [Signature] Signature of person giving voluntary statement

WITNESS: [Signature]

Continuation of Voluntary Statement by:

Keith A. MillingtonPage 2 of 2

UP Behind the Honda with their Red lights and sirens on. The Honda made a quick U-TURN onto the COLLIER CITY BRIDGE to go WEST AND THE COPS FOLLOWED. THE HONDA MADE THE U-TURN TOO QUICK AND IT CRASHED INTO THE CONCRETE BARRIER ON THE DRIVER'S SIDE GRANT. AS SOON AS THIS HAPPENED THE ONE COP CAR WAS ABLE TO PULL IN FRONT OF THE HONDA AT AN ANGLE TO BLOCK THE HONDA IN. THE SECOND COP CAR PULLED BEHIND THE HONDA. THE FIRST COP GOT OUT OF HIS POLICE CAR AND HE HAD HIS GUN OUT. THAT'S WHEN THE HONDA BACKED UP AND HIT THE SECOND POLICE CAR THAT WAS BEHIND IT. THE HONDA BACKED UP ONLY A COUPLE OF FEET BEFORE IT HIT THE SECOND COP CAR. AS SOON AS THE HONDA WAS BACKING UP THE FIRST COP WHO WAS OUT OF HIS CAR STARTED SHOOTING "STOP! STOP! STOP!" THE COP PRETTY MUCH YELLED THIS THE WHOLE TIME. AFTER THE HONDA BACKED UP AND HIT THE SECOND COP CAR THE DRIVER OF THE HONDA STARTED TO DRIVE FORWARD TOWARD THE FIRST POLICE OFFICER. THAT'S WHEN THE COP STARTED SHOOTING. I DON'T KNOW HOW MANY TIMES HE SHOT, BUT IT WAS A LOT. IT SOUNDED LIKE HE EMPTIED HIS CLIP. AFTER THE COP SHOT THE HONDA KEPT ROLLING FORWARD AND IT LOOKED LIKE IT WOULD HAVE HIT THE FIRST COP CAR. THE COP IN THE SECOND CAR THEN RAN UP TO THE HONDA AND PULLED THE GUY WHO WAS DRIVING THE HONDA OUT OF THE CAR AND ONTO THE GROUND WHERE IT LOOKED LIKE THE COP GAVE THE GUY A KICK. THE SECOND COP HAD gotten out of his car AS SOON AS THE HONDA BACKED UP AND HIT HIS POLICE CAR AND SO THIS SECOND COP WAS OUT OF HIS CAR ALREADY WHEN THE FIRST COP STARTED SHOOTING. AFTER GETTING THE GUY OUT OF THE HONDA THE SECOND COP GOT INTO THE HONDA AND IT LOOKED LIKE HE WAS TRYING TO BACK THE HONDA UP. A FEW MINUTES AFTERWARDS A BUNCH OF OTHER COPS SLOWED UP AND ONE OF THEM SAID TO ME, "GET THE FUCK OUT OF HERE!" I THEN DROVE AWAY EAST ON HOOSICK STREET AND WE WENT TO THE McDONALD'S ON HOOSICK STREET AND 15TH STREET ACROSS FROM THE SPEEDWAY GAS STATION. I WANT TO SAY THAT MY FRIEND VINNY WAS DRINKING AT THAT PARTY THAT NIGHT BUT I DON'T HAVE ANYTHING TO DRINK THAT'S WHY I WENT TO THE PARTY TO PICK HIM UP. I WANT TO SAY WHEN THE HONDA BACKED UP AND HIT THE SECOND COP CAR HE WAS GOING PRETTY FAST AND WHEN HE STARTED PULING FORWARD HE WAS GOING PRETTY FAST TO GET AWAY. TO ME IT LOOKED LIKE HE WOULD HAVE HAD TO EITHER GO ALL THE WAY AROUND THE COP CAR TO GET AWAY OR TO GET AWAY, VM

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WITNESS: _____

WITNESS: Leckind

Keith A. Millington
Signature of person giving voluntary statement